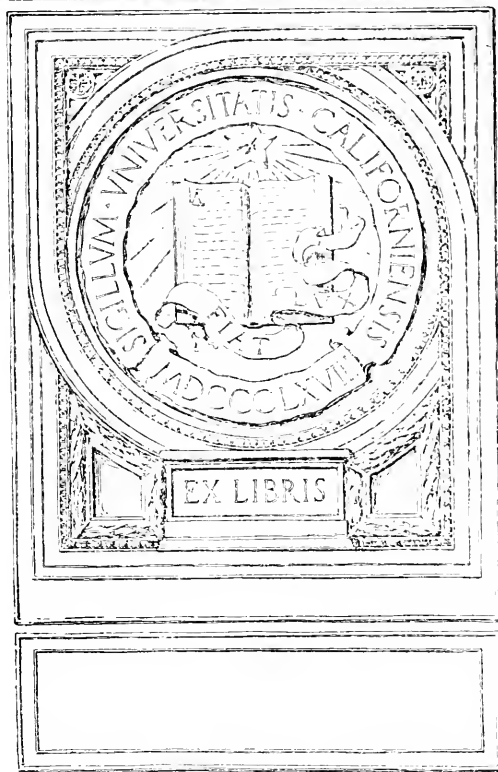


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THE LAW
RELATING TO THE DUTIES
ON
LAND VALUES
207
AND
MINERAL RIGHTS
AND TO THE VALUATION OF THE SAME
BEING
PART I OF
THE FINANCE (1909-1910) ACT
1910
WITH THE INCORPORATED ENACTMENTS
FULL EXPLANATORY NOTES
AND
A PRACTICAL INTRODUCTION

BY
E. M. KONSTAM

OF THE INNER TEMPLE, BARRISTER-AT-LAW

AUTHOR OF "RATES AND TAXES ; A PRACTICAL GUIDE "

JOINT EDITOR OF " RYDE & KONSTAM'S RATING APPEALS, 1894-1904 "

EDITOR OF " RATING APPEALS, 1904-1908 "

LONDON :
BUTTERWORTH & CO., 11 & 12, BELL YARD, TEMPLE BAR.
Law Publishers.

1910

W. & A.

1888

PRINTED BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

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PREFACE.

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AFTER a controversy more prolonged and more severe than has been undergone by any financial measure of our time, the "Land Clauses" of the Budget Bill of 1909 have become law as Part I. of the Finance (1909-10) Act, 1910. Part I., which is the subject of this book, forms a measure practically independent of the rest of the Act. The taxes imposed by it are as follows: The increment value duty, the reversion duty, the undeveloped land duty, and the mineral rights duty; and different provisions apply to the increment value duty according as it is levied upon land or upon minerals. Part I. also directs a general valuation of all land in the United Kingdom, which is to be commenced immediately; and it provides for the valuation of minerals.

This book is happily not concerned with controversy, but there can be no question either of the novelty or of the extreme complexity of the measure that is here dealt with. The new taxes are imposed in respect of subject-matters which (apart from death duties) have admittedly hitherto escaped taxation. New standards of value are set up: and they are numerous. The Act uses many phrases of importance, even in describing the subjects of taxation, as to the meaning of which it affords very little guidance: for instance, it contains no definition of the word "minerals," nor does it state what is meant by "transfer on sale." In short, Part I. travels into many regions of law; and opens up, so to speak, a whole new continent of valuation.

In view, then, of the novelty and the difficulty of the statute, I have felt justified in employing every means which came to my hands of elucidating its

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provisions, and I have not hesitated to cite many cases decided upon earlier Acts and other documents, nor to pray in aid established principles of law; I have frequently ventured to express my own opinion upon the interpretation of the sections; as often as possible, I have framed concrete examples to illustrate what I conceive to be the effect of the various provisions. I have also given references to the Debates on the Bill wherever these seemed to be helpful.

The chief definitions of value are contained in section 25. Although the standards of value now set up are based principally upon market value, and the standard of value for poor rate is based upon rental value, much may be gathered by a comparison with the law of rating; and much also may be gathered by a contrast with that law. I have ventured, therefore, in my notes to section 25, keeping in view that comparison and that contrast, to suggest principles for the application of the new standards to the various kinds of property which will now have to be valued.

The procedure upon the forthcoming valuation, and the rights of objection and appeal given to the subject, are fully dealt with in the notes; and here, again, use has been made of certain analogies with the rating practice.

The provisions relating to minerals are not the least complicated in Part I., and I have attempted to make clear the method by which they are to be valued and taxed.

But what the reader of a new statute requires (much more than the opinions of an individual writer) is that he shall find the means to make the statute interpret itself. This aid I have been at pains to supply, in the shape of abundant cross-references and a copious index. The incorporated enactments are printed in an appendix.

The new duties and the impending valuation must be of immediate interest and of pressing importance to very many persons connected with the ownership,

management, and valuation of land. In the Introduction, I have sought to provide a practical guide to the whole measure, unencumbered by detail, in order that it may be of use to those readers. Incidentally, perhaps, it is not too much to hope that it may also serve the legal profession as an outline of the subject. Separate chapters are devoted to each tax, showing its nature, and the method of its assessment and collection; to the taxpayer's rights of objection and appeal; and to the returns and accounts required from him. The numerous standards of valuation or definitions of value are collected in one chapter; and another chapter is devoted to the duties on, and exemptions applying to, agricultural land.

Part I. has undergone much alteration since it was introduced. It then consisted of twenty-eight clauses; in Committee many of these were amended out of all knowledge, and fourteen additional clauses were inserted; upon Report, the whole measure was (not without necessity) practically redrafted. The latest amendments were made on April 26, 1910.

The Table of Statutes and Table of Cases have been prepared by my friend Mr. RUPERT OLLIVANT of the Inner Temple, to whom I am also greatly indebted for help in the collection of material and in many other ways.

My learned friend Mr. WALTER C. RYDE has been good enough to read a part of the work, and I am grateful to him for much invaluable advice. I have also to thank my friends Mr. HAROLD WARD and Mr. MORRIS NICKALLS, of the Inner Temple, for help in seeing the book through the Press.

E. M. K.

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THE LAW OF LAND VALUES.

INTRODUCTION.

CHAPTER I.

THE DUTIES ON LAND VALUES: SCHEME OF PART I.

The Duties imposed.—All the duties imposed by Part I. of the Finance (1909–10) Act, 1910, are new to our legislation, and the principles of valuation are also new. The duties so imposed are four in number; the increment value duty, the reversion duty, the undeveloped land duty, and the mineral rights duty. The increment value duty is imposed by s. 1, subject to the provisions of ss. 2–12; the reversion duty by s. 13, subject to the provisions of ss. 14 and 15; the undeveloped land duty by s. 16, subject to the provisions of ss. 17, 18, 19; and the mineral rights duty by s. 20, subject to the provisions of s. 21.

Certain provisions with respect to increment value duty on minerals are contained in s. 22.

Exemptions are conferred on certain persons or bodies in respect of some or all of these duties by ss. 35, 37, and 38.

Section 29 places in the discretion of the Commissioners the unit of land on which each duty is to be assessed.

Valuation.—The main principles of valuation are
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laid down in s. 25. A valuation of all land in the United Kingdom, upon those principles, is directed by s. 26, with subsidiary provisions in ss. 27, 30, and 31. Periodical valuations of undeveloped land are directed by s. 28. Provisions as to the ascertaining of certain values necessary for the assessment of increment value duty are, however, contained also in ss. 2 and 32, and of values necessary for that of reversion duty in s. 13.

Certain special provisions as to the valuation of minerals appear in s. 23.

Miscellaneous Provisions.—A record of valuations, apportionments, assessments to duty, and other matters is provided for by s. 30, and copies may be obtained by persons interested in the land. Appeals are provided for by ss. 33 and 34. A provision for deductions in respect of “betterment” is contained in s. 36.

Section 39 gives power in certain cases to charge the increment value duty and reversion duty on settled land and land vested in a trustee.

Certain special provisions as to copyholds (including customary freeholds) are contained in s. 40.

Section 41 is the general interpretation clause.

Section 24 is the special interpretation clause for the mineral provisions.

Section 42 provides for the application of Part I. to Scotland.

By s. 91, in Part VII., it is provided that half the net proceeds of the duties be appropriated for the benefit of local authorities.

By s. 96 (2) in Part VIII., the administration of Part I. of the Act is (generally) given to the Commissioners of Inland Revenue. Section 93 provides for the laying before Parliament of certain rules and regulations made

under the Act. Section 94 makes it a punishable offence to make false statements, etc.

The Crown is not mentioned in Part I. (except in ss. 10, 17 (3) (*b*) and 37 (1)), and is not therefore liable to pay the duties imposed. It seems doubtful whether its lands can be included in the valuation made under s. 26.

CHAPTER II.

INCREMENT VALUE DUTY.

Nature of the Duty.—The increment value duty is a duty, levied at the rate of one pound in every complete five pounds, upon the increment value of land (s. 1), and is levied upon three groups of occasions described respectively in paragraphs (a), (b), and (c) of s. 1.

These groups of occasions are (shortly) :—

First.—Any transfer on sale of the land or any interest in the land, or the grant of any lease of the land for a term exceeding fourteen years; the sale or lease being transacted in pursuance of a contract made after the commencement of the Act, s. 1 (a).

Secondly.—The death of any person dying after the commencement of the Act, where the fee simple or any interest in the land is property liable to estate duty, s. 1 (b).

Thirdly.—Where any land or any interest in the land is held by any body corporate or unincorporate, in such a manner that s. 1 (b) does not apply to it, the periodical occasions specified in s. 6, namely, the 5th April, 1914, and the 5th April in every subsequent fifteenth year, s. 1 (c).

The duty is only levied on any occasion so far as it has not been paid on any previous occasions, ss. 1, 3 (1); and in certain cases of exemption it is deemed for this purpose to have been paid, see *e.g.* s. 35; and see the notes at pp. 74, 75.

Subject to the remarks, *infra*, on "Increment Value," "Minerals," "Exemptions," "Credit against other Duties," and "Unit of Assessment," the duty due on each of these groups of occasions will be dealt with separately.

Special provision is made for the case of copyholds (including customary freeholds) by s. 40.

Increment Value: Site Value.—The increment value is ascertained according to principles laid down in s. 2, and may be described as representing the difference between "original site value" and the increased "site value of the land on the occasion on which increment value duty is to be collected." If the latter "site value" shows no increase over the "original site value" there is no increment value, and no duty is due. The "original site value" is fixed once for all by means of the general valuation directed by s. 26 (see Chapter VIII.), and the "site value on the occasion on which increment value duty is to be collected" is fixed upon different principles (laid down in s. 2) according as that occasion falls within the first, second, or third group, but always subject to certain deductions specified in s. 2 (2). It will thus be seen that the words "site value" are used in Part I. in at least two distinct senses, and care must accordingly be taken in reading the Act to notice in which sense they are used, wherever the words occur. To the economist the words "site value" may perhaps always express the same abstract idea, namely, the value of land denuded of any improvements upon it, and that is no doubt the reason why the same phrase is used in the Act to signify amounts which are to be determined on different principles and by different machinery. But to the lawyer and the valuer who may have to apply the Act in practice the nomenclature employed may prove misleading unless this caution is borne in mind. The various terms of valuation used in the Act are briefly explained in Chapter VII.

The "original site value" ascertained by the valuation made under s. 26 may require apportionment or reapportionment in order to serve as a basis for calculating increment value, where, for instance, the piece of land transferred on sale is not identical with the piece of land shown in that valuation. Section 29 (2) gives the Commissioners power to make such an apportionment of their own motion; and requires them to make an apportionment or reapportionment on the application of certain persons specified.

In certain cases of decline in value since purchase or mortgage, a sum to be determined by the Commissioners is to be substituted for the original site value, s. 2 (3). "Increment value" is further described in the notes (pp. 77-79), where some arithmetical examples are given. Section 3 (5) contains provisions for reducing increment value by certain percentages in order to avoid the necessity of levying the duty upon small increases of value, subject to a proviso designed to prevent evasion of the duty by dealing with land in a series of small transactions.

Deductions are allowable in estimating the site value on the occasion on which increment value is to be collected, upon the same principles as in arriving at original site value, see Chapter VII.; if they could have been, but were not, claimed for the purpose of ascertaining original site value, they cannot be claimed afterwards, s. 12. The deductions made will be recorded under s. 30.

Minerals.—Although mineral rights are subject to a special duty (Chapter V.), there is nothing in s. 1 itself to prevent the increment value duty being levied in respect of minerals or of rights to get minerals, and there is nothing to exclude the value of minerals from "the site value on the occasion on which increment value duty becomes due," ascertained under s. 2 (2). As to original site value in the case of minerals, see Chapter

VI. The above remarks apply to common clay, common brick clay, common brick earth, sand, chalk, limestone, and gravel, whether or no they are comprised in a mining lease or are being worked. But those remarks do not apply (in the case of substances other than those just mentioned) to the occasion of the grant of a mining lease, or to minerals which are comprised in a mining lease, or are being worked; in these cases the increment value duty is not charged under s. 1, but where charged at all, is charged as an annual duty, in the manner described in Chapter V.

No increment value duty is charged in the case of any minerals which were comprised in a mining lease, or being worked, on 30th April, 1909, so long as the minerals so continue, s. 22 (2). The exemption continues though the minerals cease to be comprised in a mining lease or to be worked, for a temporary period not exceeding two years, s. 22 (2), proviso.

Exemptions.—Exemptions generally are dealt with in Chapter VI. and most of these apply in one way or another to the increment value duty. But certain exemptions are enacted with reference to the increment value duty alone: with regard to certain agricultural land by s. 7 and s. 8 (2), with regard to certain sites of dwelling-houses by s. 8 (1), with regard to certain land used for games and other recreations by s. 9, and with regard to buildings used for the purpose of separate tenements, flats, or dwellings by s. 11.

Credit against other Duties.—Section 14 (4) contains provisions for the crediting, in certain circumstances, of increment value duty which has been paid, against reversion duty which is still to be paid, and *vice versâ*; and s. 16 (3) contains a provision for the reduction in certain circumstances of the site value upon which undeveloped land duty is payable, where increment value duty has been paid; but there is no corresponding provision for the reduction of increment value duty,

where undeveloped land duty (which is an annual tax) has already been paid.

Unit of Assessment.—The Commissioners may assess the duty in respect of any such pieces of land as they think fit, s. 29.

Duty on the First Group of Occasions.—An attempt to elucidate the words “transfer on sale” in s. 1 (a) is made in the notes, pp. 62-68. “Land,” “interest in relation to land,” and “lease” are all defined in s. 41, see notes, pp. 305-312. “Land” does not include any incorporeal hereditament issuing or granted out of the land; but it is thought that there may be circumstances in which the enjoyment of incorporeal hereditaments, such as easements, tolls, or sporting rights, may carry with it the ownership, or add to the value, of land in respect of which duty is due (see notes, pp. 309-311).

Basis of Assessment.—Where the duty is due upon a transfer on sale of the fee simple (defined in s. 41), the value of the consideration for the transfer has first to be ascertained, s. 2 (2) (a).

Principles for ascertaining consideration are laid down in s. 32, and discussed in the notes at pp. 259-266. From the consideration so ascertained there are to be made the deductions referred to at p. 6.

When these deductions have been made from the consideration, the net remainder is “the site value on the occasion on which increment value becomes due.” From this sum has then to be subtracted the “original site value” and the result is the “increment value,” upon which the duty is assessed under s. 3 (1) and (2), subject to reduction under s. 3 (5). Arithmetical examples of this process are given at pp. 78, 79.

Where the duty is due upon the grant of a lease (for a term exceeding fourteen years), or upon the transfer on sale of any interest in the land, the provisions for the assessment are exceedingly complicated. The

value of the consideration for the grant of the lease or the transfer of the interest is first to be ascertained as in the case last described; next, from the consideration so ascertained, the value of the fee simple is to be calculated on some basis not indicated in the Act, s. 2(2)(b). The deductions above described have then to be made, and the net result is "the site value on the occasion on which increment value duty becomes due." From this sum has then to be subtracted the "original site value," and the remainder is the increment value (s. 2(2)(b)). But that remainder represents the increment value of the fee simple, and not of the leasehold interest granted, or of the interest transferred on sale. Accordingly, a further process has to be gone through, by which the Commissioners will determine (according to rules to be made by them) what is the proportionate part of the duty to be collected, s. 3(3); see also s. 3(5). Examples to illustrate these processes are given at p. 87.

As to exemptions and appeals, see p. 7, and Chapter IX.

Machinery of Assessment.—The Commissioners will determine the amount of duty payable, s. 3(1). They will also determine the amount of increment value on which the duty is leviable. As to the machinery for adopting an original site value, see Chapter VIII. The consideration for the transfer on lease will no doubt be ascertained by the Commissioners upon the instrument or particulars furnished to, or obtained by, them under s. 4. They also fix the deductions to be made under s. 2(2). As to appeals, see Chapter IX.

A provision for interim assessment where the original site value has not been finally settled is contained in s. 27(6), see Chapter VIII.

Incidence.—On any of the first group of occasions the duty is paid by the "transferor" or "lessor," as the case may be, s. 4(1); see definitions in s. 41. But there is nothing to prevent him from contracting with the

transferee or lessee that the latter shall pay the duty. Persons who join in the transfer or lease for the merely technical reasons described in s. 41 are not liable. A provision for charging the duty on settled land and on land vested in a trustee in certain cases is contained in s. 39.

Collection and Recovery.—The duty is a stamp duty, s. 3 (6); and is in general collected on the instrument by means of which the transfer or lease is effected or agreed to be effected, s. 4 (2); but see the regulations to be made under s. 4 (5). Where an agreement is stamped for this purpose, the subsequent conveyance, assignment, or lease need not be so stamped, s. 4 (7); if the transaction is not completed, the duty paid will be returned, on an application made within the time limited by s. 4 (6). The transferor or lessor is obliged, under penalties, to present the instrument or reasonable particulars thereof to the Commissioners for the assessment of duty, in accordance with rules to be made by them (s. 4 (2) (5)). Provisions for stamping are contained in s. 4 (3). Regulations for payment by instalments in certain cases are to be made under s. 4 (5). The duty is made a debt due to the Crown by s. 4 (4); as to the effect of this provision generally and with regard to priority, see note at p. 96.

Duty where Property passes on Death.—The provisions of the Finance Acts, 1894–1910, and the decisions relevant to the meaning of property passing on death are set out in the Appendix, pp. 334–365.

Basis of Assessment.—On occasions in the second group, where the property passing on death is the fee simple of land, the principal value ascertained for the purposes of estate duty, subject to the deductions specified in s. 2 (2) (see notes at pp. 81, 99) is “the site value on the occasion on which the increment value duty is to be collected,” s. 2 (2) (c); s. 5. From that sum the original site value is deducted, and the remainder

is the increment value upon which the duty is leviable, s. 3 (2), subject to reduction under s. 3 (5); but see also s. 3 (4) as to the case of settled land. Where the property passing is any interest in the land, the principal value of the interest ascertained for the purposes of estate duty is first taken. Upon the basis of this sum the value of the fee simple is then calculated (upon some principle not indicated in the Act), and the deductions specified are next made from the value of the fee simple. The result is the "site value on the occasion on which increment value duty becomes due," s. 2 (2) (c), s. 5. But that result represents the increment value of the fee simple and not merely of the interest which passes. Accordingly, the Commissioners have to determine (according to rules to be made by them), the proportionate part of the duty to be collected, s. 3 (3), subject to reduction under s. 3 (5). But see also s. 3 (4) as to the case of settled land. Examples to illustrate these processes are given, pp. 78, 79, 87.

As to exemptions, see p. 7.

Machinery of Assessment.—The Commissioners will determine the amount of duty payable, s. 3 (1). As to the procedure for adopting "original site value," see Chapter VIII. The principal value ascertained under the Finance Act, 1894, and the amending enactments (see Appendix) is accepted by the Commissioners for the purpose of ascertaining the increment value; but it is subject to the deductions to be made under s. 2 (2), which have to be fixed by the Commissioners. As to appeals, see Chapter IX. A provision for interim assessment where the original site value has not been finally settled is contained in s. 27 (6), see Chapter VIII.

Incidence.—The duty due on this occasion is payable by the same person who is liable for the estate duty; except where any interest in land on which the duty is payable is property passing to the personal representative as such, in which case the duty is payable out of that interest in exoneration of the rest of the deceased's

estate, s. 5. A provision for charging the duty upon settled land in certain cases is contained in s. 39.

Recovery.—The duty due is a stamp duty, s. 3 (5); and is recoverable as if it were an addition to the estate duty, except where it is payable out of an interest in land which passes to the personal representative as such, in which case it is to be collected on an account delivered by him, s. 5. The relevant provisions as to estate duty are set out in the Appendix, pp. 343, *sqq.*

The duty ranks *pari passu* with other debts of the deceased, except so far as the property assessed to the duty is concerned, s. 5, proviso; in regard to the latter the duty appears to have the same priority as in the case of duty levied upon the first group of occasions. See notes, p. 101.

Duty on Periodical Occasions.—A body corporate or unincorporate is liable to duty under paragraphs (a) and (b) of s. 1, when any occasion described in those paragraphs arises in respect of such a body, s. 6 (5). But as the occasion described in paragraph (b) will not often affect such a body, it is also, in respect of any land or interest held to which paragraph (b) does not apply, made liable to duty on the periodical occasions specified in s. 1 (c) and s. 6 (1). As to the meaning of “body corporate” and “body unincorporate,” see notes, pp. 72, 73. Exemptions are granted to “rating authorities,” etc. (s. 35), to “governing bodies,” “registered societies,” etc. (s. 37), and to “statutory companies” (s. 38), in manner more or less limited by those sections; see Chapter VI. The Crown is not liable to any duty. As to other exemptions, see p. 7.

Assessment.—Upon these periodical occasions, the “site value on the occasion on which increment value duty becomes due” is (subject to the deductions allowed by s. 2 (2), see p. 76) the “total value of the land” estimated on the principles described in Chapter VII. (s. 2 (2) (d)), but with reference to the periodical

occasion in question. The "original site value" is deducted from the total value as so estimated, and the remainder is the increment value. Where the fee simple of any land is held by the body in question, the whole amount of the duty is collected, s. 3 (2); where only an interest in the land is held, a proportionate part of the duty as determined by the Commissioners, is collected, s. 3 (3); subject in either case to reduction under s. 3 (5).

Machinery of Assessment—Account to be delivered.—Every body corporate or unincorporate chargeable with the duty must include in the account delivered under the Customs and Inland Revenue Act, 1885, s. 15, on or before 1st October, 1914, 1st October, 1929, and so on, an account of the increment value of the land as on the preceding 5th April (see "assessment," *supra*); and if that body does not already so deliver an account, it must deliver such an account for this purpose, s. 6 (2). A penalty for non-delivery is imposed by the Act of 1885, s. 18 (2), Appendix, p. 329. The Commissioners then proceed to assess the duty in accordance with ss. 17 and 19 of that Act, which are incorporated by s. 6 (3) of the present Act, and are set out in the Appendix, pp. 328, 329; but subject to the provisions of s. 3 of the present Act, and to appeals under s. 33, see Chapter IX. The provisions of the Act of 1885 as to appeals are not applied. A provision for interim assessment where the original site value has not been finally settled is contained in s. 27 (6), see Chapter VIII.

Incidence.—The body corporate or unincorporate, and every accountable officer, are answerable for the duty, the latter being allowed to recoup himself out of the moneys of the body, Act of 1885, ss. 12, 14, 16, Appendix, pp. 326–328. But there appears to be nothing to prevent the body corporate or unincorporate from covenanting with its tenants that they shall pay the duty.

Recovery.—The recovery of the duty is provided for by the incorporation in s. 6 (3) of the Act of 1910, of

ss. 12-14, 16, 18 (2) and 20 of the Act of 1885 (Appendix, pp. 326, *sqq.*) ; but it may be paid by instalments if the body chargeable so desire, Act of 1910, s. 6 (3). The duty is made a first charge on the property in respect whereof it is payable, under certain limitations, Act of 1885, s. 14, and will presumably rank *pari passu* with the duty leviable under that Act. A penalty for neglect to pay is imposed by s. 18 (2).

CHAPTER III.

REVERSION DUTY.

Nature of the Duty.—The reversion duty is a duty levied at the rate of one pound in every complete ten pounds, on the value of the benefit accruing to the lessor by reason of the determination of any lease of land, and is payable on the determination of the lease, s. 13. "Lease" is defined in s. 41, and includes an under-lease, but does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption. As to exemptions, see next paragraph.

By virtue of s. 22 (1), the duty is not chargeable on the determination of a "mining lease" as defined in s. 24.

Exemptions.—In addition to the general exemptions described in Chapter VI., total exemptions from reversion duty are created by s. 14 in the following cases, stated briefly: First, where in case of a reversion purchased before 30th April, 1909, the lease on which the reversion is expectant determines within forty years of the date of the purchase (there is a proviso against this exemption applying on surrender, except in certain cases), s. 14 (1); Secondly, on the determination of the lease of any land which is at the time of the determination agricultural land, as defined in s. 41; Thirdly, on the determination of a lease, the original term of which did not exceed twenty-one years; and Fourthly, where the interest of the lessor expectant on the determination of a lease is a leasehold interest which does not

exceed twenty-one years, s. 14 (2). Partial relief from the duty is provided for by s. 14 (3) in certain cases of surrender and grant of a fresh lease; and by s. 14 (5) in cases where a reversion has been mortgaged before 30th April, 1909, and the mortgagee has foreclosed before the determination of the lease. Section 14 (4) provides, in certain circumstances which have to be proved to the satisfaction of the Commissioners, for the credit against reversion duty of increment value duty that has been already paid; and for a similar credit against increment value duty, where the reversion duty has been paid first.

Basis of Assessment.—The “value of the benefit” on which reversion duty is charged is defined in s. 13 (2), and is apparently intended to represent the benefit which accrues to the lessor by the reversion falling in, excluding any part of that benefit which is due to expenditure by the lessor on permanent improvements. In order to ascertain the “value of the benefit” it is necessary, first, to ascertain “the total value of the land at the time the lease determines,” next, to deduct therefrom “any part of the total value which is attributable to any works of a permanent character executed by the lessor during the term of the lease,” or to “expenditure of a capital nature” so incurred by him, as well as “all compensation payable by the lessor at the determination of the lease.” Next, “the total value of the land at the time of the original grant of the lease” has to be ascertained “on the basis of the rent reserved and payments made in consideration of the lease,” including, in certain cases, the value of covenants or undertakings to erect buildings or expend money; and the sum so ascertained has to be deducted from the remainder that is left of the “total value at the time the lease determines” after the deductions already described have been made therefrom. The ultimate remainder is “the value of the benefit.” The effect of these highly artificial phrases is discussed in

the notes at pp. 124-126, with arithmetical examples. Of course, if the "value of the benefit" is in fact *nil*, no duty is leviable. See s. 15 (1).

Machinery of Assessment—Account to be Delivered.—Every lessor, on the determination of a lease on the determination of which the duty is payable, is bound to deliver an account, showing among other things his estimate of the value of the benefit, s. 15 (2). If he knowingly fails to do so within three months after the determination, he is liable to penalties, which increase upon a continuance of the default, s. 15 (3).

The Commissioners may assess the duty upon the footing of the account delivered, or may, if dissatisfied therewith, have an account taken by their own nominee, and assess the duty thereupon, Customs and Inland Revenue Act, 1885, s. 17 (1). In certain circumstances, they may recover the expenses of the latter account (if taken) as an addition to the duty, s. 17 (2); see Appendix, p. 328.

The Commissioners may assess the duty in respect of any piece of land that they think fit, Act of 1910, s. 29. As to appeals, see Chapter IX.

Incidence.—Reversion duty is payable by the lessor (s. 15 (1)), but there appears to be nothing to prevent him from contracting with a lessee that the latter shall bear the burden. Reversion duty may be charged on settled land and on land vested in a trustee in certain circumstances, s. 39.

Recovery.—The duty is recoverable from the lessor as a debt due to His Majesty, s. 15(1); see notes, pp. 95, 96. It is payable as soon as it is assessed, Act of 1885, s. 17 (3). It ranks, however, *pari passu* with all other debts due from such lessor, Act of 1910, s. 15 (1).

CHAPTER IV.

UNDEVELOPED LAND DUTY.

Nature of the Duty.—The undeveloped land duty is a duty of $\frac{1}{2}d.$ in the £ on the site value of undeveloped land, s. 16 (1). Undeveloped land is land which “has not been developed by the erection of dwelling-houses or buildings for the purpose of any business, trade, or industry other than agriculture (but including glass-houses or greenhouses), or is not otherwise used bonâ fide for any business, trade or industry other than agriculture,” s. 16 (2). Except “agriculture,” defined in s. 41, the expressions here quoted receive no interpretation in the Act, and an attempt is made to elucidate them in the notes, pp. 143–152. Undeveloped land for this purpose does not include minerals, s. 16 (4).

Under proviso (a) to s. 16 (2) the duty is to be levied in certain circumstances upon land which reverts to the condition of undeveloped land after having been developed.

The duty is to be levied for the financial year ending 31st March, 1910, and every subsequent financial year.

As to exemptions, see next paragraph.

Exemptions.—Besides the general exemptions described in Chapter VI., there are certain specific exemptions applying to the undeveloped land duty. By s. 16 (2), proviso (b), land is, in certain circumstances and for a limited time, not to be treated as undeveloped land if the owner or any of his predecessors in title have spent certain sums on roads or sewers with a view to developing or using the land in the manner specified in the

definition of undeveloped land. The duty is not charged in respect of land of which the site value does not exceed £50 an acre, s. 17 (1). There are three exemptions applying to agricultural land (besides those under sub-ss. (1) and (3) which may also apply to agricultural land among other land); first, the duty is only to be charged on the amount by which the site value of the land exceeds the value of the land for agricultural purposes, s. 17 (2); see notes, p. 158; secondly, agricultural land is, subject to certain limitations, altogether free from the duty, where it is held under a tenancy created by a lease or agreement entered into before 30th April, 1909, s. 17 (5); and thirdly, agricultural land occupied and cultivated by the "owner" (which term is specially enlarged for this purpose) is freed from the duty, if the total value of all the land belonging to that owner does not exceed £500, s. 18. Sub-s. (3) of s. 17 confers exemptions (the enjoyment of which is, to the extent specified in sub-s. (3), subject to the final decision of the Commissioners), in respect—unconditionally—of the site value of (*a*) paths, gardens, or open spaces which are open to the public as of right; and—upon various conditions—of the site value of (*b*) any woodlands, parks, gardens, or open spaces, reasonable access to which is enjoyed by the public or by the inhabitants of the locality; (*c*) any land being kept free of buildings in pursuance of some definite scheme for development; and (*d*) any land used bona fide for the purpose of games or other recreation. By sub-s. (4) the duty is not to be charged on the site value of any land not exceeding an acre in extent occupied together with a dwelling-house for the purpose of inhabited house duty, nor (within a certain limit of value) of any gardens or pleasure-grounds so occupied, to the extent of five acres.

Basis of Assessment.—The site value upon which the duty is assessed is the value adopted as the "original site value," or where the site value has been ascertained under any subsequent periodical valuation

of undeveloped land for the time being in force, the site value as so ascertained, s. 16 (3). See Chapters VII. and VIII.

Provisions for the apportionment of site value are contained in s. 29.

Where increment value duty (see Chapter II.) has been paid in respect of the increment value of any undeveloped land, the site value is to be reduced for the purposes of the present duty by five times the amount paid as increment value duty, s. 16 (3), proviso; while the increment value duty stands at twenty per cent., this means that the whole of the increment value on which duty has been paid will be deducted for the purpose of assessing undeveloped land duty.

Machinery of Assessment.—The site value (see last note) is to be ascertained according to the procedure described in Chapter VIII. The duty is to be assessed by the Commissioners, s. 19. It may be assessed in respect of any such pieces of land as they think fit, s. 29. Section 19 contains a provision by which the duty may be assessed at any time (not more than three years after the expiration of the year for which it is charged), if this has not been done within that year owing to there being no value shown in the provisional valuation or finally settled on which the duty can be assessed, or for any other reason. See also s. 27 (6).

As to appeals, see Chapter IX.

Incidence.—The duty is recoverable from the owner of the land (as defined in s. 41) “for the time being.” The latter words are not explained, and difficulties may arise from a change of ownership or from a change in the condition of the land, which are not provided for in the Act; see notes, pp. 141, 166. The duty is to be borne by the “owner” notwithstanding any contract to the contrary, s. 19.

Collection and Recovery.—The duty is payable at any time after the 1st January of the year for which

the duty is charged, s. 19. It is recoverable as a debt due to His Majesty, s. 19. Upon the meaning of this phrase and with regard to priority, see notes, p. 96. Where the duty is assessed at any time after the year for which it is charged, it is payable at any time after the expiration of two months from the date of the assessment, s. 19.

CHAPTER V.

MINERAL RIGHTS DUTY AND INCREMENT VALUE DUTY IN RESPECT OF MINERALS.

Mineral Rights Duty—Nature of the Duty.—The mineral rights duty is a duty of 1s. in the £ on the rental value of all rights to work minerals and of all mineral wayleaves, s. 20 (1). This duty is not, however, charged in respect of the right to work common clay, common brick clay, common brick earth or sand, chalk, limestone, or gravel, nor in respect of mineral wayleaves regarding those substances, sub-s. (5). The Act is silent on the question what are minerals; the decisions of the Courts on this subject are not easily reconcileable, but some account of them is given in the notes, pp. 169–172.

This duty is to be levied for the financial year ending 31st March, 1910, and every subsequent financial year.

Machinery of Assessment.—The duty is to be assessed by the Commissioners, s. 20 (4); and for this purpose they will have to ascertain the rental value in any case, though it is only where the minerals are being worked by the proprietor that this is expressly stated, sub-s. (2) (*b*). The Commissioners have power to require returns of the amounts received in respect of the right to work minerals and of the wayleave, and, where the proprietor is working the minerals, returns in respect of the minerals worked, sub-s. (3).

It is not clear how far the powers of the Commissioners under s. 29 to assess duty upon any such pieces

of land as they think fit apply to the assessment of this duty.

As to appeals, see Chapter IX.

Basis of Assessment.—This duty is assessed upon the rental value, which is ascertained upon different principles, in the cases where the right to work the minerals is the subject of a mining lease, in the cases where minerals are being worked by the proprietor, and in the case of a mineral wayleave : see “Rental Value: Minerals,” Chapter VII.

In each case, the rental value is ascertained with reference to the rent or output of the last working year ; this expression means the year ending on the 30th September in the financial year with respect to which the duty is levied, unless the Commissioners in any case approve of a working year ending upon some other date, s. 24. There is, however, a provision for special cases of high rents, contained in s. 20 (2), proviso.

Incidence.—The mineral rights duty is recoverable from the proprietor where he is working the minerals, and in any other case from the immediate lessor of the working lessee, s. 20 (4). These terms are defined in s. 24. As between the immediate lessor and the working lessee, the duty shall be borne by the immediate lessor, notwithstanding any contract to the contrary, s. 20 (4). The immediate lessor is, however, given by s. 21 certain rights of deduction against a superior lessor, and so on.

Collection and Recovery.—The mineral rights duty is payable at any time after the 1st January in the year for which the duty is charged (s. 20 (4)), and is recoverable as a debt due to His Majesty ; as to the meaning of this phrase and as to priority, see notes, p. 96. Relief is to be given from the payment of mineral rights duty in any year to any proprietor or lessor who pays increment value duty under s. 22 (3), up to the amount of the latter duty paid by him as such in that year, s. 22 (6).

Increment Value Duty: Minerals.—Where minerals (other than common clay, common brick clay, common brick earth, sand, chalk, limestone or gravel) are “comprised in a mining lease” or “are being worked,” increment value duty is levied in respect of them according to the provisions of s. 22, and not of ss. 1 and 2. The expressions quoted are defined by s. 24. As to increment value duty in respect of minerals not comprised in a mining lease and not being worked, and in respect of common clay and the other substances above mentioned, see Chapter II., “Minerals.”

In the case of minerals (other than the substances above specified) which were comprised in a mining lease or being worked by the proprietor on 30th April, 1909, no increment value duty is charged while the minerals continue to be so comprised or worked. And the exemption continues to apply although the minerals cease for a temporary period to be so comprised or worked, so long as the period does not exceed two years, s. 22 (2).

Annual Duty.—Under s. 22, the increment value duty in the case of those minerals within the purview of the section which are comprised in a mining lease or being worked is levied as a duty payable annually, sub-s. (1). It is charged upon an increment value, which is not estimated as a capital sum, but is estimated annually according to the principles described in Chapter VII., “Increment Value: Minerals,” sub-s. (3). The duty has apparently to be assessed by the Commissioners, and the rental value to be ascertained by them. As to appeals, see Chapter IX.

The provisions as to collection and recovery of the mineral rights duty are applied to this duty by sub-s. (5). It follows that the duty is payable by the proprietor who is working the minerals, or by the immediate lessor of the working lessee, as the case may be; and the immediate lessor is given the right of deduction

under s. 21 against his superior lessee, and so on, s. 22 (5). It is submitted, however, in the notes at p. 186, that, as respects the increment value duty leviable annually, the immediate lessor is not prevented from recouping himself at the expense of the working lessee.

Valuation of Minerals.—See Chapters VII. and VIII.

CHAPTER VI.

GENERAL EXEMPTIONS.

Rating Authorities.—Rating authorities and statutory combinations of rating authorities are exempted from all the duties leviable under Part I. in respect of any land or interest in land held by them, s. 35.

Charitable Purposes.—“A governing body constituted for charitable purposes includes any person or body of persons who have the right of holding, or any power of government of, or management over, any property appropriated for charitable purposes, . . . and includes any corporation sole and all universities, colleges, schools and other institutions for the promotion of literature, science or art,” s. 37 (1). The various parts of this definition are discussed in the notes at pp. 283–285, and “charitable purposes” appear to include both religious and educational purposes, among other matters. Such a governing body is exempt by s. 37 (1) from reversion duty and undeveloped land duty in respect of land or any interest in land held by it, while the land is occupied and used by it for its purposes. Increment value duty is not to be collected on any of the periodical occasions specified in s. 1 (c) in respect of the fee simple or any interest in any land held for the purposes of the body (whether so occupied or used or not) ; but on the occasions specified in s. 1 (a) and (b) (*e.g.* transfer on sale, grant of a lease for a term of years exceeding fourteen years, see Chapter II.), the duty will be levied on the full increment value.

In the definition of “governing body” above quoted

there appear in parentheses the words “(including property appropriated for the purpose of any of the naval or military forces of the Crown)”: it is submitted in the notes at p. 283, that these words are superfluous, and that even without them such property as is there described enjoys complete immunity from the taxes imposed under Part I.

Registered Society.—This is defined by s. 37 (2) to mean any society or body of persons who are registered, or whose rules are certified or registered, by a Registrar of Friendly Societies in pursuance of any Act of Parliament, and who by their rules make provision for the benefits set out in s. 8 (1) of the Friendly Societies Act, 1896 (printed in the notes at p. 286), and where the contract between the society and the members is of a permanent character.

A registered society enjoys the same exemption from taxation under Part I. as a “governing body,” s. 37 (2).

Company or Body Precluded from dividing Profit.—The exemption created by s. 37 is also conferred upon a company under the Companies Act, 1908, or a body of persons incorporated by a special Act, if the memorandum of association or Act precludes the division of any profit amongst the members, s. 37 (2).

Statutory Company.—This expression is defined at some length in s. 38 (4) and includes (stated shortly) a company, person or body of persons authorised by a Special Act or Order to construct or carry on any railway, canal, dock, water or other public undertaking. An exemption from increment value duty, reversion duty, and undeveloped land duty is enjoyed by a statutory company in respect of any land while it is held for the purposes of their undertaking, and cannot be appropriated by the company except to those purposes. Land which is intended to be ultimately appropriated for those purposes, but which is temporarily used for other purposes is not excluded from the benefit of this provision.

Increment value duty will, however, be collected when any land held by the company for the purposes of their undertaking is sold or ceases to be so held, s. (1). A statutory company is given no exemption as regards the mineral rights duty.

Bodies Corporate and Unincorporate who are by any of the provisions above summarised excused from paying increment value duty on any periodical occasion in respect of any land (see Chapter II., "Duty on Periodical Occasions") are not then obliged to deliver an account of the increment value of the land, s. 6 (5).

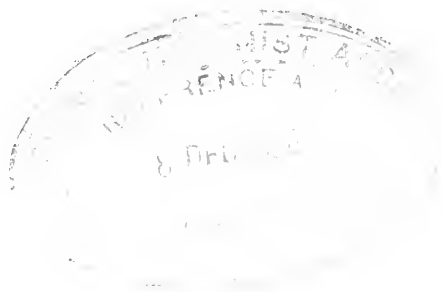
Betterment.—Certain charges paid in respect of what is commonly called "betterment" are to be deducted from the increment value of the land for the purposes of the collection of increment value duty, from the site value for the purposes of the collection of undeveloped land duty, and from the value of the benefit for the purposes of reversion duty, s. 36.

Valuation.—None of the exemptions from duties above described appears to have the effect of excluding the land concerned from the valuations to be made under ss. 26 and 28, nor to exempt the person or body in question from the duty of furnishing the returns provided for in s. 26; see Chapters VIII. and X. In the case of a statutory company, the return required is modified by s. 38 (2).

Crown Lands.—The Crown, not being mentioned in Part I., except in ss. 10, 17 (3) (b) and 37 (1), is not liable to pay any of the duties thereby created. It is submitted in the notes at p. 230, that these duties are not leviable, not only in respect of lands held by the Crown or by what are ordinarily called Government Departments, but also in respect of lands held by persons (who may be called quasi-servants of the Crown) for the purposes of the general administration of the country, as in the case of police stations and assize

courts. It is further there submitted that such lands are not to be included in the valuations to be made under ss. 26 and 28, and that no returns need be furnished in respect of such lands.

Provisions for the collection of increment value duty on the occasion of a transfer on sale or of the grant of a lease for a term of years not exceeding fourteen years, to the Crown or a Government Department are contained in s. 10 (2). The duty on such an occasion is collected from the transferor or lessor, s. 1 (2).



CHAPTER VII.

TERMS AND PRINCIPLES OF VALUATION.

The Terms used.—The terms used in Part I. to denote the various values which have for various purposes to be ascertained are somewhat confusing, because they have apparently been chosen rather in conformity with some economic theory than with a view to clearness of nomenclature. The result is that values ascertained upon different principles and by different machinery are given names so similar that at first sight they appear to denote the same idea; and accordingly great care must be taken in reading Part I. to understand exactly what kind of value is meant when any given term is used. In the following paragraphs, the attempt is made to furnish what may serve in some sort as a glossary of these terms. The terms applying to minerals are treated together at the end of this chapter.

Gross Value of Land.—This means “the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, and from any other burden, charge or restriction (other than rates or taxes) might be expected to realise,” s. 25 (1). The several phrases making up this definition are discussed at some length in the notes at pp. 203–216.

The “gross value of land” is not used for any purposes of taxation; but it lies at the root of the scheme of valuation, because it is from the gross value that the “total value” and the “site value” are derived, by processes now to be summarised.

Full Site Value.—This means “the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the value which the fee simple of the land if sold at the time in the open market by a willing seller might be expected to realise if the land were divested of any buildings,” and of certain structures described, “and of all growing timber, fruit trees, fruit bushes, and other things growing thereon,” s. 25 (2). This very elaborate definition is discussed in the notes at pp. 217–220. The “full site value” is used as a means of calculating the “assessable site value,” but it is not itself used for purposes of taxation.

Total Value.—The total value of land means the gross value after making certain deductions therefrom in respect of matters specified in s. 25 (3), which are mostly of the nature of burdens, charges, or restrictions upon the enjoyment of land; such deductions are only allowed under various conditions imposed by s. 25 (3) and to the extent to which the gross value would be diminished if the land were sold subject to the matters in question.

“Total value” may be said, briefly, to be intended to represent the market value of land as it stands, with all existing buildings, improvements, etc., and subject to certain of the burdens, charges or restrictions which in fact apply to it.

Total value as on 30th April, 1909, has to be shown in the valuation of all land in the United Kingdom to be made under s. 26; see Chapter VIII. And when the various stages of this valuation necessary to final settlement have been gone through with respect to the total value of any land, the total value finally settled is adopted as the “original total value,” s. 27 (3).

The total value of land, estimated on the principles above outlined but with reference to the particular occasion, is taken to be the site value of land on a

periodical occasion on which the duty is to be collected from a body corporate or unincorporate, s. 2 (2) (d).

The phrase "total value" is also used with reference to reversion duty, s. 13 (2). The "value of the benefit" upon which that duty is assessed is arrived at by a process described in Chapter III., which makes it necessary to ascertain "the total value of the land at the time the lease determines," and "the total value of the land at the time of the original grant of the lease." As used in the former of these phrases, the term "total value" has the meaning given to it by s. 25 (3) and above set out; but the total value at the time of the original grant is "to be ascertained on the basis of the rent reserved and payments made in consideration of the lease," subject to certain qualifications, s. 13 (2).

Special provisions for ascertaining total value in the case of certain copyholds (including customary freeholds) are made by s. 40.

Original Total Value is the total value shown in the valuation made under s. 26, as finally adopted and settled under s. 27; see "Total Value."

Site Value: Various Meanings.—The various ideas to which the name of site value is given in Part I. have this much in common, that they do not represent the value of land "in its then condition," but the value of land supposed to be divested of something, which is in fact upon it. This is a colourless description; but to particularise further might be to introduce further confusion.

The "site value of land on an occasion on which increment value duty is to be collected," means one thing, which is defined in s. 2 (2), and will be discussed subsequently. The "site value of land," without the qualifying words quoted, means a different thing; namely, the "assessable site value," as defined in s. 25 (4).

It is the “assessable site value” which, under the name of “site value” simply, is to be shown in the valuation of all land in the United Kingdom to be made under s. 26, see Chapter VIII.; and when the various stages necessary to the final settlement of the site value of any land in connection with this valuation have been completed, the “site value” as finally adopted and settled is “the original site value,” s. 27 (1), (3).

The “assessable site value” is also to be shown in the periodical valuation of undeveloped land to be made under s. 28.

The site value for the purposes of undeveloped land duty (see Chapter IV.) is taken to be the original site value, or the site value shown in a periodical valuation, as the case may be, s. 17 (3), subject to a reduction there specified.

Special provisions for the ascertaining of site value in the case of certain copyholds (including customary freeholds) are contained in s. 40.

Assessable Site Value.—This is defined by that name in s. 25 (4), but is everywhere else in the Act referred to as “site value” simply; see the last paragraph.

It means the total value, as above described, after deducting, first, “the same amount as is to be deducted for the purpose of arriving at full site value from gross value,” s. 25 (4), (a); see “Full Site Value,” *supra*; secondly, deductions in respect to various matters specified in s. 25 (4) (b) (c) (d), to the extent to which any part of the total value is proved to the Commissioners to be directly attributable to those matters; thirdly, certain sums which in the opinion of the Commissioners it would be necessary to expend for the purposes specified in s. 25 (4) (e).

It may be said, briefly, that “assessable site value” is intended to represent the market value of a site assumed to be a cleared site, with deductions in respect of certain existing elements of value, and of certain

expenditure which would be necessary if the clearing of the site were to be actually undertaken. But the process by which the result is to be attained is extremely intricate; and it is not suggested that the above concise statement is in any sense a definition.

Site Value on an Occasion on which Increment Value Duty is to be collected.—This is a different thing from that “site value” which is identical with “assessable site value”; see “Site Value,” *supra*. It is used as a factor in determining “Increment Value,” which see, *infra*. It is ascertained upon different principles, laid down in s. 2 (2), to suit the different classes of occasions on which increment value duty becomes due; and by the procedure laid down in ss. 4–6. These principles and procedure have been summarised in Chapter II.

Original Site Value is the site value (that is, the “assessable site value”) shown in the valuation made under s. 26, as finally adopted and settled under s. 27; see “Site Value.”

In the case of land held within the meaning of s. 38 (1) by a statutory company, the actual cost to the company of the land is to be substituted for the original site value, s. 38 (2).

The original site value is, until a periodical valuation under s. 28 comes into force, the site value for the purposes of undeveloped land duty, s. 17 (3). The original site value is also one of the factors used in ascertaining “Increment Value,” which see, *infra*.

Value of the Land for Agricultural Purposes.—Where this value (in the case of agricultural land) is different from the site value, it is to be shown separately in the valuation made under s. 26; see Chapter VII. The principles are not laid down upon which “the value of the land for agricultural purposes” is to be ascertained for the purposes of this valuation; but it is submitted in the notes at p. 231 that it should be

ascertained, for the purposes of that valuation at any rate, upon the principles laid down in s. 25 (4) for the ascertaining of site value, except that the land must be considered as having no value which could be realised in the open market for any purposes other than agricultural. "Agriculture" is defined in s. 41.

The expression "value for agricultural purposes" appears also in s. 7 with reference to an exemption from increment value duty; and in s. 17 (2) with reference to an exemption from undeveloped land duty. In s. 7, this expression is qualified by the words "market" and "at the time," which appear (as far as they go) to support the view above submitted.

Increment Value is the name for the sum upon which the increment value duty (see Chapter II.) is to be charged, levied and paid, under s. 1, subject to the provisions of s. 3 and other sections; and by s. 2 (1) "the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected . . . exceeds the original site value of the land. . . ." These phrases are discussed under "Site Value," *supra*; and the meaning of "increment value" is discussed in the notes at p. 77.

See also "Increment Value: Minerals," *infra*.

The Value of the Consideration for a transfer or lease is determined according to the provisions of s. 32. "That value shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and, so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioners to be the capital value of that payment," sub-s. (1). An addition to this value may be made in respect of certain covenants or undertakings, in certain cases, where they form part of the consideration, sub-s. (2).

The figure so arrived at is to be used for the purpose

of calculating "increment value" under s. 2 (2) (a) and (b). A figure arrived at on similar principles is used for calculating "the value of the benefit" under s. 13 (2); see "The Value of the Benefit," *infra*.

Principal Value is the value of property passing on death ascertained for the purpose of assessing estate duty under the Finance Act, 1894, as amended; and is a factor in ascertaining "increment" value under s. 2 (2) (c). See Appendix.

The Value of the Fee Simple.—See s. 2 (2) (d) and notes, p. 80. See also s. 25.

The Value of the Benefit accruing to the lessor is the sum upon which reversion duty (see Chapter III.) is charged under s. 13 (1), and by s. 13 (2) "shall be deemed to be the amount (if any) by which the total value of the land at the time the lease determines, subject to the deduction of any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease and of all compensation payable by such lessor at the determination of the lease, exceeds the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property);" see "Total Value," *supra*. Where the lessor is entitled only to a leasehold interest, the value of the benefit is to be reduced in a certain proportion, s. 13 (2).

Total Value: Minerals.—The total value of minerals means the amount which the fee simple of the minerals, if sold in the open market by a willing seller in their then condition, might be expected to realise, s. 23 (1); cf. "Total Value of Land," *supra*. This may or may not have to be shown in the valuation to be made under s. 26,

according to the effect which s. 23 (2) has in the particular case; see Chapter VIII., "Minerals." No duty is actually levied upon the total value of minerals, but the capital value of minerals is derived from it by a process of subtraction.

Original Total Value : Minerals.—Where a total value is shown for minerals in the valuation made under s. 26, the total value as finally settled would probably be called the original total value. But as no duty is levied in respect thereof, this amount will not be of much importance.

Capital Value : Minerals : Various Meanings.—As the "site value of land" is used in various senses in the Act, so also is the expression "capital value of minerals." For the purpose of settling the "original capital value" of minerals, the capital value means the "total value," as above defined, "after allowing such deduction (if any) as the Commissioners may allow for any works executed or expenditure of a capital nature incurred bonâ fide by or on behalf of any person interested in the minerals for the purpose of bringing the minerals into working." If the minerals have been partly worked, the amount of the deduction is to be reduced by the Commissioners in proportion to the amount of minerals which have not been worked, s. 23 (1).

The capital value of minerals on any occasion on which increment value duty is to be collected, means the value of minerals ascertained upon the principles upon which the site value of land upon any such occasion is ascertained, s. 23 (4); see "Site Value of Land," *supra*. This capital value of minerals is used for the purpose of ascertaining increment value in respect of minerals in certain circumstances; see "Increment Value : Minerals," *infra*.

Original Capital Value : Minerals.—Where a capital value is shown for minerals in the valuation made under s. 26 (see Chapter VIII., "Minerals"), that capital value,

as finally settled or adopted, is called the "original capital value," s. 23 (4). Where the "capital value of minerals" is specially ascertained under s. 22 (7), it is to be treated as the "original capital value." As to the use to which this is put, see "Increment Value: Minerals," *infra*.

Annual Equivalent: Minerals.—The "annual equivalent" in respect to minerals is a sum equal to two twenty-fifths of the "original capital value" of the minerals; or, if increment value duty has been collected under s. 1 in respect of the minerals (before the minerals have become comprised in a mining lease or have commenced to be worked), then the annual equivalent is a sum equal to two twenty-fifths of the capital value of the minerals on the last preceding occasion on which increment value duty has been so collected, s. (3). See "Increment Value: Minerals," *infra*.

Increment Value: Minerals.—The meaning of the phrase "increment value" in respect to minerals varies according to the method by which the increment value duty is levied. Where the minerals are comprised in a mining lease or being worked, that duty is charged annually, and the increment value upon which it is charged is, not a capital sum, but "the sum (if any) by which in each year during which the tenancy continues or the minerals are being worked, the rental value on which mineral rights duty is charged in respect of the right to work the minerals exceeds the annual equivalent" as above described. There is a provision for the reduction of rental value for this purpose in certain special cases, s. 22 (4). Arithmetical examples of the result of this process are given in the notes at p. 185. See "Rental Value," *infra*.

In all other cases where an increment value duty is levied in respect of minerals, the increment value represents the difference between the "original capital value" of the minerals and the "capital value of the

minerals on the occasion on which increment value duty becomes due," ss. 1, 23 (3). See notes, pp. 61, 187.

Rental Value: Minerals and Wayleaves.—The rental value of all rights to work minerals and of all mineral wayleaves is the value upon which mineral rights duty is charged (s. 20; see Chapter V.), and is also used for the calculation of "Increment Value: Minerals," which see.

Where the right to work minerals is the subject of a mining lease, the amount of rent (which includes royalties, etc.) paid by the working lessee in the last working year in respect of that right is the rental value, s. 20 (2) (a); subject to a provision for special cases contained in the proviso to s. 20 (2). The terms, "mining lease," "rent," "working lessee," "last working year," are defined in s. 24, read with s. 41.

The rental value of mineral wayleaves is assessed on the same principle, s. 20 (2) (c).

Where minerals are being worked by the proprietor, the Commissioners are to determine what sum he would have received as "rent" if he had let the right to work the minerals for a term and at a rent and on conditions customary in the district, and if the minerals had been worked as he has actually worked them, in the last working year; and that sum will be the rental value, s. 20 (2) (b). See also s. 24, last para. These processes are discussed and illustrated in the notes at pp. 172-174.

CHAPTER VIII.

MACHINERY OF VALUATION.

Valuation of All Land in the United Kingdom.—Under s. 26, a valuation of all land in the United Kingdom is to be made by the Commissioners as soon as may be. This is the valuation which has been sometimes described as the “Domesday” valuation. It is suggested in the notes at p. 230, that land owned by the Crown, or for the purposes of the Crown cannot be included in the valuation. But it is clear that any land which is within the benefit of an exemption created by the provisions of the present Act is to be included in the valuation. The values shown in the valuation, when finally settled according to the procedure here to be authorised, are adopted as the original total value and original site value for the purposes of Part I., s. 27.

Powers of inspection, and of obtaining the name and address of any person who receives rent for any lands, for the purposes of valuation are given to the Commissioners by s. 31.

Values to be shown.—This valuation is to show the total value and the site value. The value of the land for agricultural purposes is also to be shown, where that value is different from the site value. As to the meaning of the above terms, see Chapter VII. Each of these values is to be shown separately for each piece of land which is under separate occupation and for any part of such a piece which the owner (as defined in s. 41) requires to be separately valued, s. 26 (1). The question what is a piece of land under separate occupation appears to be answered upon the principles which apply

to occupation for purposes of the poor rate, and which are summarised in the notes, pp. 232-238. The bearing upon an assessment of duty of the power of the owner to require a separate valuation under s. 26 (1) is dealt with in the notes at p. 238.

All minerals are to be treated in the valuation as a separate parcel of land, s. 23 (2). As to their value, see "Returns: Estimate," *infra*.

All the values are to be estimated as on 30th April, 1909.

Returns: Estimate.—Certain returns for the purpose of the valuation may be required from any "owner" (as defined in s. 41) and from any person receiving rent. The return must contain the particulars which the Commissioners may (in the notice) require, upon the subjects specified in s. 26 (2), and which the person required to make the return has it in his power to give. A penalty is imposed for failure to make the return in the time specified in the notice, which must not be less than thirty days, s. 26 (2). As to the returns to be made by statutory companies, see s. 38 (2).

Further, any "owner" (as defined in s. 41) may furnish his estimate of the values of the land, and the Commissioners are bound to consider it, s. 26 (3). In most cases it will be wise for the owner to exercise this power.

In the case of minerals not comprised in a mining lease or being worked, the owner may in his return specify the nature of the minerals and his estimate of their capital value; if he does not do so, they will be treated in the valuation as having no value as minerals, s. 23 (2); see also s. 23 (3).

Information as to Provisional Valuation.—The valuation as made by the Commissioners under s. 26 is called in s. 27 the "provisional valuation." Under s. 27 (1), a copy of so much as relates to any particular land is

to be served by them upon the "owner" of that land, and "owner" by s. 27 (7) is given for this purpose and the other purposes of s. 27 a wider meaning than in the definition in s. 41. Service in the manner laid down in s. 31 (4) is sufficient. Moreover, any other person interested in the land may obtain a copy by applying for one to the Commissioners before the provisional valuation is finally settled, s. 27 (5).

Objection—Appeal.—The owner, or the person interested who has applied for a copy under sub-s. (5), if he considers that the total or site value, as shown in the provisional valuation, is incorrect, may give notice of objection. The notice must specify the grounds of objection and the amendment desired, s. 27 (2). On the contents of the notice, see notes p. 246. The notice of objection must in the case of the "owner" be given within sixty days of the service upon him of the copy of the provisional valuation; but the Commissioners may allow an extension of time in special cases, s. 27 (2). It is not quite clear from what date the time runs in the case of any other person interested; see notes p. 244.

If the Commissioners do not amend the provisional valuation so as to be satisfactory to any objector that objector may give notice of appeal; see Chapter IX. The making of an objection to a provisional valuation is a condition precedent to an appeal, s. 33 (1), proviso (a); see notes p. 245.

Final Settlement of Values.—If no notice of objection is given in the time and manner above specified, the values in the provisional valuation are adopted as the "original total value" and "original site value" respectively, s. 27 (1). If the Commissioners amend the provisional valuation so as to be satisfactory to all persons making objections, the total value and site value as so amended are adopted as the original total and original site value, s. 27 (2). And apparently all persons making objections are taken to be satisfied if

none of those persons gives notice of appeal with respect to the valuation (s. 27 (4)) within the time limited by the rules to be made under s. 33. If such a notice of appeal is given by any such person, the original total value and original site value can obviously not be adopted until the appeal is disposed of. The Act does not provide how effect is to be given to the decision upon such an appeal ; but perhaps the rules to be made under s. 33 will provide for this matter.

The Commissioners have power to amend their provisional valuation of any land at any time before it has been finally settled, whether objected to or not, s. 27 (3). Such an amendment can apparently be challenged by a fresh objection ; see notes p. 245.

Deductions.—If any deduction admissible for the purpose of ascertaining the original site value of the land (see Chapter VII.), could have been claimed before that original site value is finally settled, under the provisions outlined in this Chapter, and has not been so claimed, that deduction cannot be claimed afterwards, on any occasion on which increment value duty becomes payable, s. 12.

Minerals.—The provisions for the valuation above described are somewhat modified with respect to minerals by s. 23 (2) (3). By these provisions, minerals are, in valuation, to be treated as a separate parcel of land ; but where minerals are not comprised in a mining lease and not being worked, they are to be treated as having no value as minerals, unless the proprietor of the minerals in which they are comprised, in his return furnished to the Commissioners, specifies the nature of the minerals, and his estimate of their capital value. See Chapter X., “Returns,” “For Valuation : Minerals.”

Minerals which were on the 30th April, 1909, comprised in a mining lease or being worked will not be shown in the valuation above described, subject to

certain conditions as to their continuance in that state, s. 23 (3).

A provision for specially ascertaining the capital value of minerals where they cease to be comprised in a mining lease or to be worked, is contained in s. 22 (7).

Assessment of Duty pending Valuation.—Where the “original total value,” or “the original site value” has not been “finally settled,” duty may be assessed with regard to the values shown in the provisional valuation as amended up to the time of assessment; on the values being finally settled, any duty found to have been paid in excess is to be refunded, and any duty found to remain due is to be levied as arrears, s. 27 (6).

Periodical Valuation of Undeveloped Land.—In 1914 and every subsequent fifteenth year, the Commissioners are to make a valuation of undeveloped land, showing the site value only, which is to be estimated as on 30th April in that year, s. 28. The machinery of ss. 26 and 27 is applied to this valuation by s. 28. The proviso to s. 28 enables the Commissioners to complete such a valuation after the expiration of the year of valuation.

Apportionment.—“Original site value,” and any site value fixed on a periodical valuation are to be apportioned and reapportioned under s. 29 (2), (3), (4), when the Commissioners think this necessary for certain purposes, or when any person entitled to the fee simple or to any interest in the land requires this to be done. The provisions as to valuation apply to this matter as with reference to the ascertainment of original site value. It is submitted that s. 29 (2), (3), (4) applies to the original capital value of minerals.

Other Provisions for Valuation.—The original site value and original total value and the site value of

undeveloped land are to be ascertained by the valuations above described. For the purposes of increment value duty, the Commissioners have also to ascertain the site value on the occasion on which that duty is to be collected, and this is done under the provisions in ss. 3-6, which relate to the assessment of such duty; see Chapter II. For the purpose of the reversion duty, they have to ascertain the value of the benefit, and the factors which determine that value (see Chapter III.); and this they will do under the provisions of s. 15 of the present Act, and of s. 17 of the Customs and Inland Revenue Act, 1885, which enable them to assess that duty. For the purpose of either duty the Commissioners may have to ascertain or apportion the value of the consideration for a transfer on lease; this is provided for by s. 32. See also Chapter VII.

The rental value of minerals and of mineral way-leaves, and the annual equivalent of the capital value of minerals, are to be ascertained under ss. 20 and 22.

Record and Copies thereof.—By s. 30 the Commissioners are bound to record particulars of all valuations, assessments, deductions, etc., made by them, and of all payments of duty. And any person interested in the land, or any person authorised by him, may have certified copies of such particulars on payment of a fee.

CHAPTER IX.

OBJECTIONS AND APPEALS.

Objections.—The right of objection to the provisional valuation made under s. 26 has been briefly described in Chapter VIII. Section 28 confers similar rights in respect of a periodical valuation ; and s. 29 (3) in respect of an apportionment, etc., made under that section. The giving of a notice of objection under s. 27 (2) is made a condition precedent to an appeal against a provisional valuation, s. 27 (3) ; s. 33 (1), proviso (*a*) ; see notes p. 245. And an appeal against a periodical valuation appears to be limited in the same way.

Right of Appeal.—Section 33 (1) confers upon any person aggrieved the right of appeal against determinations and decisions of the Commissioners which are described by various phrases in that sub-section. The various descriptions are not all mutually exclusive ; but they cover practically all the matters which are put within the jurisdiction of the Commissioners by Part I. (see notes pp. 270–273), except those matters upon which the decision of the Commissioners is made final by s. 17 (3).

Appeals against the values shown in the provisional valuation (see Chapter VIII.) are covered by the words “against the first determination of the total value or site value of any land,” in s. 33 (1) ; they can only be brought by a person who has made objection to the provisional valuation (s. 33 (1), proviso (*a*)) if the provisional valuation is not amended by the Commissioners so as to be satisfactory to him, s. 27 (3). And these

values can only be questioned by such an appeal, and not on an appeal against the assessment of duty, s. 33 (1), proviso (b). A person, therefore, who lets slip the time for objecting or appealing against the provisional valuation cannot afterwards question the original site value or the original total value.

Proviso (b) also applies to the site value as ascertained under any subsequent valuation; but, except as above stated, the right of appeal upon the various matters mentioned in s. 33 (1) is unfettered by any conditions precedent, etc., so long as the appeal is made in the time and manner prescribed by rules which are to be made under sub-s. (5).

Questions of the value of any real (or leasehold) property under the Finance Act, 1894, are now, by virtue of s. 60 (3) of the present Act (Appendix, p. 363), the subject of appeal under the procedure here described.

Referee.—An appeal brought under s. 33 (1) is to be referred to a referee, and determined by him in consultation with the Commissioners and the appellant, or any persons nominated by either of those parties for this purpose, sub-ss. (2), (3). The referee is to be selected from a panel appointed under s. 34. He has power to make an order upon either party to pay the expenses of the other (sub-s. (3)), and the form in which his decision is to be given will be provided for in rules made under sub-s. (5). The Act does not, except as above stated, prescribe the referee's method of procedure; and though this may perhaps be dealt with in the rules to be made under sub-s. (4), it is apparently not intended to confine the referee to a "hearing" of the appeal in the strictly judicial sense of the word.

Appeals from Referees.—Any persons aggrieved by the decision of the referee (except in the case mentioned in s. 25 (3)), may appeal to the High Court, or, where the total or site value, as alleged by the Commissioners, of the property in respect of which the dispute arises does

not exceed £500, to the County Court. "Rules of Court" will provide for the time and manner and conditions of making such appeals, s. 33 (4). See also Finance Act, 1894, s. 10 (3), (4), incorporated thereby.

It appears that the Commissioners have as much right to appeal to the High Court or County Court from the decision of the referee as the original appellant; and that an appeal from the referee's decision may raise questions either of law or of fact.

Further Appeals.—From a decision of the High Court upon an appeal from a referee there can be no further appeal except with the leave of the High Court or Court of Appeal, s. 33 (4); Finance Act, 1894, s. 10 (2). Against a decision of the County Court upon an appeal under s. 33 (4) there is a right of appeal to the Court of Appeal, apparently without an intermediate appeal to the High Court; see the notes at p. 276.

CHAPTER X.

RETURNS, ETC., TO BE FURNISHED BY THE SUBJECT.

For Increment Value Duty.

On Transfer or Lease.—On the occasion of any transfer on sale of any land or interest in land or on the grant of any lease of any land for a term exceeding fourteen years (the occasions on which increment value duty becomes due under s. 1 (a)), the transferor or lessor must, under penalty, present to the Commissioners, in accordance with regulations to be made by them, either the instrument by means of which the transfer or the lease is effected, or is agreed to be effected, or reasonable particulars thereof, s. 4 (2). The regulations to be made will probably prescribe on what occasions the instrument itself is to be presented, and on what occasions the presentation of reasonable particulars is sufficient. They will also prescribe the mode of presentation. They may, in certain cases, dispense with the presentation of the instrument or particulars, s. 4 (5).

When Property passes on Death.—The accounts delivered for the purpose of assessment of estate duty under the Finance Act, 1894, will in general be sufficient for the purpose of ascertaining the principal value, which sum is utilised by s. 2 (2) (c) of the present Act; see s. 5. But where any interest in land in respect of which increment value duty is payable is property passing to the personal representative as such, the personal representative has to deliver an account, setting forth the particulars of the increment value in respect of the property, s. 5.

In the Case of a Body Corporate or Unincorporate.—Bodies corporate or unincorporate and their accountable officers are bound by s. 6 (2) of the present Act, and s. 15 of the Customs and Inland Revenue Act, 1885, thereby incorporated, to deliver in the years 1914, 1929, and so on, an account of the increment value duty of the land held by them, as on 5th April in that year. A penalty on failure to furnish the account is provided by s. 18 (1) of the Act of 1885, incorporated by s. 6 (3) of the present Act. Bodies corporate or unincorporate which are exempt from paying the duty on any periodical occasion need not render this account on that occasion, s. 6 (5).

For Reversion Duty.—On the determination of a lease on the determination of which reversion duty is payable, the lessor must deliver to the Commissioners an account setting forth the particulars of the land and the estimated value of the benefit accruing to him by the determination, under penalties, s. 15 (2), (3).

For Mineral Rights Duty.—Every proprietor of any minerals and every person to whom any rent is paid in respect of a right to work minerals, or of any mineral wayleave, may be required by the Commissioners to give particulars as to the amount received by him in respect of the right or wayleave, and as to the minerals worked by the proprietor. Any person so required must make a return in the form required by the notice within the time, not being less than thirty days, specified therein. A penalty is provided on default, s. 20 (3).

For Valuation.—Any owner of land and any person receiving rent in respect of any land shall, on being required by notice from the Commissioners, furnish to them within the time (not being less than thirty days) specified in the notice, a return containing such particulars as may be required as to the rent received and certain other matters, which it is in his power to

give. A penalty on default is provided, s. 26 (2). This obligation appears to extend to all persons or bodies exempted from any duty by any provision of Part I.

Similar returns may be required for the periodical valuation of undeveloped land to be made under s. 28 ; and apparently also for the purposes of apportionment under s. 29 (2), (3).

A statutory company is not to be required to make any of the returns required under s. 26 (2) with respect to any such land as is described in s. 38 (1), other than as to the actual cost to the company of the land, s. 38 (2).

Every person who pays rent in respect of any land, or who as agent receives any rent in respect of any land, is bound under penalties, on being required by the Commissioners, to furnish to them within thirty days the name and address of the person to whom he pays rent, or on behalf of whom he receives rent, s. 31 (1), (3).

If the Commissioners give any general or special authority to any person to inspect any land and report the value to them, the person having the custody or possession of the land is bound under penalties, on production of the authority, to permit the person authorised to inspect the land at such reasonable times as the Commissioners consider necessary, s. 31 (2), (3).

For Valuation: Minerals.—Where minerals are not comprised in a mining lease and not being worked, the owner of the land in making his return under s. 26 need not apparently (unless he wishes to do so) specify the nature of the minerals. Unless the proprietor (as defined in s. 24) of the minerals furnishes a return specifying the nature of the minerals and his estimate of their capital value, they shall, if shown in the valuation to be made under s. 26, be treated as having no value as minerals, s. 23 (2). As to what minerals are to be shown in that valuation, see Chapter

VIII., "Minerals." Minerals shown in the valuation are treated as separate parcels of land, s. 23 (2); and should be so treated in the return also. In other respects, the provisions of s. 26 (2) apply to returns in respect of minerals.

A difficulty arises where the "proprietor" (as defined in s. 24) of the minerals is in fact a different person from the "owner" (as defined in s. 41); in such a case it may be gathered from s. 23 (2) that the proprietor is intended to furnish a return.

False Statements.—The knowingly making a false statement or representation in any return made with reference to any duty under Part I. is an offence punishable with imprisonment on summary conviction. So also, if any false statement, etc., is knowingly made for the purpose of obtaining any allowance, reduction, rebate, or repayment, s. 94.

CHAPTER XI.

RULES AND REGULATIONS

Regulations to be made by the Commissioners.—The Commissioners are to make rules regulating the collection of increment value duty in respect of land which is held in fee simple in possession, and for the determination by themselves of the proportionate part of the duty payable in respect of an interest in land and its collection, s. 3 (2), (3). Regulations with respect to the mode in which any instrument is to be presented to them in order to be dealt with under s. 4, and for dealing with any instrument so presented to them may be made by them under s. 4 (5). It is submitted in the notes, p. 98, that “may” here means “must.” The regulations made under this sub-section must provide for payment of duty by instalments in cases where the consideration for the transfer or lease is in the form of a periodical payment. They must also provide for the remission of instalments, and for the return of the duty paid, in certain cases. They may also provide for dispensing with the presentation of the instrument or particulars in certain cases, s. 4 (5), (6).

The rules to be made by the Commissioners are to be laid before each House of Parliament in the manner provided by s. 93.

Rules to be made by Reference Committee.—The Reference Committee established by s. 33 (5) is to make rules under that sub-section with respect to the time within which and the manner in which an appeal may be made to a referee, with respect to the selection from

the panel of the referee to whom a particular appeal is to be referred, with respect to the form in which the referee's decision is to be given, and with respect to any other matter which s. 33 makes it necessary or expedient to provide for. One such matter would appear to be the mode in which the provisional valuation is to be amended if the referee's decision makes this necessary; see Chapter VIII. and notes. Rules made under s. 33 (5) are subject to the approval of the Treasury; it is not clear whether s. 93 applies to such rules. These rules when made must be carefully studied by all who desire to appeal under s. 33, as the time and manner of appealing are not provided in the Act itself.

Rules of Court.—"Rules of Court" are to be made, prescribing the time, manner, and conditions of appealing from the decision of a referee to the High Court or County Court, as the case may be, s. 33 (4).

CHAPTER XII.

AGRICULTURAL LAND.

Agricultural Land.—It is the intention of the Act to exclude from the operation of the duties imposed by Part I. agricultural land, so far as it has a purely agricultural value. It is not, however, intended that agricultural land which has a substantial value for building purposes (and possibly for other non-agricultural purposes also) should escape these duties. The provisions exempting agricultural land are therefore drawn so that such non-agricultural value shall in most cases be taxed; they are consequently somewhat obscure, and it cannot always be said with certainty that they succeed in exempting the value that they seek to exempt, or in taxing the value that they seek to tax. These provisions will now be briefly summarised.

“Agriculture” in Part I. includes “the use of land as meadow or pasture land, or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments”; and “agricultural land” includes land so used, s. 41. It is of course not intended to exclude arable land. The bearing of this definition and the effect of the words “agricultural purposes” are discussed in the notes at p. 314.

Valuation.—The deductions allowed in ascertaining the total value of land under s. 25 (3) (see Chapter VII.) will in many cases apply to agricultural land. The “site value of land” as ascertained under s. 25 (4), or the “assessable site value” as it is there called (see Chapter VII.), is the value of land divested (among

other things) of all growing timber, fruit trees, fruit bushes, and other things growing thereon, and subject to various deductions specified in s. 25 (4). Many of these deductions may from their nature often apply to agricultural land, but as to certain of them (see s. 25 (4) (b)) it is expressly provided that they shall not apply to agricultural land except in certain special circumstances.

All agricultural land will be shown in the valuation to be made under s. 26, and its value for agricultural purposes will be shown separately, where that value is different from the site value. As to the meaning of "value for agricultural purposes," see Chapter VII.

Increment Value Duty.—The deductions referred to in respect of site value in the paragraph headed "Valuation" will be made (in cases of agricultural land to which they apply) in ascertaining the site value of the land on which increment value duty is to be collected, and will therefore operate to diminish the increment value upon which the duty is payable, s. 2 (1) (2).

Increment value duty is not to be "charged in respect of agricultural land, while that land has no higher value than its market value at the time for agricultural purposes only," s. 7. The proviso to that section enacts that any value of the land for sporting purposes or for other purposes dependent on its use as agricultural land shall not defeat the exemption, except where the value for any such purpose exceeds the agricultural value. Section 7 is so concise as to be somewhat obscure; see the notes at p. 105.

Where any agricultural land is not covered by the above exemption, there is no provision that any purely agricultural value that it may possess shall escape the increment value duty; the provisions of s. 17 (2) (see next page) should be contrasted with those of s. 7.

There is a further exemption from this duty where land has for twelve months immediately previous to the

occasion on which the duty would otherwise be collected, been occupied and cultivated by the owner thereof, within certain limits of value, s. 8 (2).

Reversion Duty.—This duty is not charged “on the determination of the lease of any land which is at the time of the determination agricultural land,” s. 14 (2). There are no words confining this exemption to agricultural land which has no other value than its value for purely agricultural purposes.

Undeveloped Land Duty.—Land which is used for agriculture or which has upon it buildings for the purposes of agriculture is undeveloped land, except that land which has been developed by the erection of glass-houses or greenhouses is not undeveloped land, s. 16 (2).

Much agricultural land will, however, be within the benefit of the exemption from this duty in favour of land whose site value does not exceed £50 an acre, s. 17 (1); and some will be within the various exemptions created by s. 16 (2), proviso (*b*), and by s. 17 (3). There are also three additional exemptions expressly in favour of agricultural land, to which recourse will only be had where the site value exceeds £50 an acre; first, the duty is only to be charged on the amount by which the site value exceeds the value of the land for agricultural purposes, s. 17 (2); secondly, agricultural land held at the time of passing of the Act under a tenancy originally created before 30th April, 1909, is exempt from the duty, until the earliest date after the commencement of the Act at which the landlord can determine the tenancy, s. 17 (5); thirdly, where agricultural land is occupied and cultivated by the owner (within certain limits of value), it is not to be charged with this duty, s. 18.

THE FINANCE (1909-10) ACT, 1910.

PART I.

AN Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and to make other financial provisions. [29th April 1910.]

MOST GRACIOUS SOVEREIGN,
WE, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

DUTIES ON LAND VALUES.

Increment Value Duty.

- 1.** Subject to the provisions of this Part of this Act, Sect. 1.
there shall be charged, levied, and paid on the increment Duty on in-
value of any land a duty, called increment value duty, crement
at the rate of one pound for every complete five pounds value.
of that value accruing after the thirtieth day of April
nineteen hundred and nine, and—
- (a) on the occasion of any transfer on sale of the fee
simple of the land or of any interest in the
land, in pursuance of any contract made after
the commencement of this Act, or the grant,
in pursuance of any contract made after the
commencement of this Act, of any lease (not
being a lease for a term of years not exceeding
fourteen years) of the land ; and
- (b) on the occasion of the death of any person dying
after the commencement of this Act, where the
fee simple of the land or any interest in the
land is comprised in the property passing on
the death of the deceased within the meaning
of sections one and two, sub-section (1) (a), (b),
and (c), and sub-section three, of the Finance 57 & 58 Vict.
Act, 1894, as amended by any subsequent en- c. 30.
actment ; and
- (c) where the fee simple of the land or any interest
in the land is held by any body corporate or
by any body unincorporate as defined by
section twelve of the Customs and Inland 48 & 49 Vict.
Revenue Act, 1885, in such a manner or on c. 57.
such permanent trusts that the land or interest
is not liable to death duties, on such periodical
occasions as are provided in this Act,
- the duty, or proportionate part of the duty, so far as it
has not been paid on any previous occasion, shall be
collected in accordance with the provisions of this Act.

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Increment Value is defined in s. 2, *infra*, pp. 76, 77.

Land is defined in s. 41; see notes thereon, *infra*, pp. 305, 306. Incorporeal hereditaments issuing or granted out of the land are there excepted from the definition of land, with the result that increment value duty due in respect of land cannot be levied in respect of them. Thus, the creation of a fee farm rent (which is a rentcharge by virtue of s. 41), and apparently an incorporeal hereditament within the meaning of that section, appears not to be a transfer on sale of land within the meaning of s. 1 (a), although in certain parts of the country it is the practice to create such rents,

rather than to sell the freehold. And the grant of a lease of an incorporeal hereditament issuing or granted out of the land does not appear to be the grant of a lease of land; but a document which creates, say, a lease of tolls, may be in fact a lease of land, though this may not appear on the face of the document; if there is in fact a lease of the land, the increment value duty will, it is submitted, be leviable, whatever the conveyancing terms employed. See the notes under s. 41 on "interest in relation to land," on "easements," "tolls," "sporting rights," etc., *infra*, pp. 309, 310.

See also the note on "interest in the land," in the present section, *infra*, p. 68.

The land referred to is, of course, only land in the United Kingdom, as is made clear by the exclusion of sub-s. (2) of s. 2 of the Finance Act, 1894, from the sections of that Act which are referred to by para. (b) of this section; cf. also s. 26, *infra*, p. 229.

The duty may be assessed on or in respect of any such pieces of land as the commissioners think fit (s. 29, *infra*, p. 252). It is therefore in the discretion of the commissioners to fix the units of land which are to be taxable; but, of course, they cannot tax any land except that in respect of which increment value duty becomes due by virtue of paras. (a) (b) (c) of s. 1, on the occasions respectively specified in those paragraphs.

Minerals.—Minerals are included in "land" within the meaning of this section; but special provisions in respect of increment value duty in the case of certain minerals that are comprised in a mining lease or being worked are contained in s. 22, *infra*, p. 180, and it is only in respect of the duty on minerals outside those categories that the present section applies. See note on "minerals not comprised in a mining lease and not being worked," *infra*, p. 187.

Exemptions.—Exemptions from increment value duty alone are granted by ss. 7, 8, 9, 11, *infra*, pp. 104 *sqq.* Exemptions (or abatements) from this duty among other duties imposed by Part I. of the Act are created by ss. 35—38.

The Crown, not being named, is not liable to increment value duty on any of the occasions specified, *vide* note, *infra*, p. 230, and see s. 10, *infra*, p. 117. It is submitted that this exemption extends to servants, and to quasi-servants of the Crown, owning lands for the purposes of the Crown. Cf. *Coomber v. Berks JJ.* (1883), 9 A. C. 61, *infra*, p. 230. It is made clear, however, by s. 10 (2), *infra*, p. 277, that increment value duty will be leviable on the occasions specified in s. 1 (a) when the transferor or lessor is a private person, although the transfer or lease is to the Crown or any of its servants or quasi-servants for the purposes of the Crown. Some of the persons so owning lands will be within the benefit of the exemption conferred on local and rating authorities by s. 35, *infra*, p. 277.

Duty leviable under s. 1 (a).—The duty on the occasions included in s. 1 (a) is leviable even though duty has previously been levied on the occasion described in s. 1 (b) or s. 1 (c). It is not, however, levied in so far as it has been paid on any previous occasion, *vide infra*, p. 74.

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Provision for the collection of the duty when due upon occasions specified in s. 1 (a) is made in ss. 3, 4, *infra*.

As to exemptions, see note thereon, *supra*, p. 61.

As to copyholds, *vide infra*, p. 298.

Transfer on Sale.—These words are not defined in the Act nor is “sale” there defined; but the Stamp Act, 1891, First Schedule, imposes an *ad valorem* duty upon a “conveyance or transfer on sale of any property”; and by s. 54 of that Act, “For the purposes of this Act the expression ‘conveyance on sale’ includes every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person in his behalf or by his direction.” The actual words “transfer on sale” occur therefore in the schedule only and not in the text of s. 54; but, nevertheless, it is submitted that the decisions under these provisions of the Stamp Act, 1891 (and under earlier Stamp Acts, which contain provisions similar in effect), afford to some extent a guide as to the meaning of those words in the present Act; and that a transaction which constitutes a “transfer on sale” of any property in land under the Stamp Acts, would probably also be held to be a “transfer on sale” under the Finance (1909-10) Act, 1910. The courts deciding cases under the Stamp Acts had, of course, to deal with the nature of the actual documents before them; but they have almost always taken into consideration the whole transaction which made the document necessary, and if the word “transaction” is used in these notes in dealing with those cases, it is because the words “transfer on sale” as used in s. 1 (a) of the present Act do not appear necessarily to connote the existence of any document. As a mere matter of machinery, the increment value duty imposed on the occasion of a “transfer on sale” is levied by means of a stamp on the instrument by which the transfer is effected, s. 4, *infra*, p. 88.

There is, however, an element of doubt in this matter; namely, whether a “transfer on sale” in the present Act must be held to take place only where the consideration is actually money, or whether it is enough to constitute a sale that the consideration is in “money’s worth.” In Benjamin on Sales, p. 2, a sale of personal property is defined as “a transfer of the absolute or general property in a thing for a price in money;” and the same view is taken in the Law Dictionaries of Stroud and Sweet. It is adopted by WILLS, J., in *Coots v. Inland Revenue*, [1897] 1 Q. B. p. 783, and is embodied in the Sale of Goods Act, 1893, s. 1 (1). Sweet’s Blackstone, II. 446, defines sale as “a transmutation of property from one man to another in consideration of some price,” which leaves the question at large. Lord Blackburn, however, is more definite in saying, “A contract concerning the sale of goods may be defined to be a mutual agreement between the owner of the goods and another, that the property in the goods shall for some

price or consideration be transferred to the other. . . . If the consideration to be given for the goods is not money, it might, perhaps in popular language, rather be called barter than sale, but the legal effect is the same in both cases," Blackburn on Sales, 2nd. Ed. ix. And there have been various cases in which transactions have been held under the Stamp Acts to be conveyances or transfers on sale, where the consideration was not money but money's worth. The chief of these are those cited, *infra*, p. 64, on the formation or amalgamation of companies, where the consideration for the transfer consisted, in whole or in part, of shares in the purchasing company or of other securities; it is true that the Stamp Acts contain words which show that the consideration for a conveyance on sale within the meaning of these Acts may be stock or marketable security (*e.g.* Act of 1870, 33 & 34 Vict. c. 97, s. 71; Act of 1891, s. 55 (1). But WRIGHT, J., expressed the view in *Foster v. Inland Revenue*, [1894] 1 Q. B. p. 521, *infra*, p. 64, that where there is "a succession or transfer effected by contract for a monetary consideration . . . all the legal elements of a sale appear to be present"; LOPES, L.J., said, in *Great Western Rail. Co. v. Inland Revenue*, *ibid*, p. 513, "there is everything here that constitutes a sale.—two parties; one parting with something and the other giving something for it;" and in *Att.-Gen. v. Feliastowe Gas Co.*, [1907] 2 K. B. p. 990, *infra*, p. 64. BRAY, J., said that to constitute a sale there must, as a general rule, be two parties, and a consensus between them, "a consideration and a transfer of the property." In *Bristol v. Inland Revenue*, [1901] 2 K. B. 336, *infra*, p. 67, no actual money passed, but the transaction was held to be a sale because the primary considerations were an indemnity against a mortgage debt, and the release of another debt; but it should be pointed out that s. 57 of the Stamp Act, 1891, *infra*, p. 260, makes each of these matters a consideration for the purpose of that Act, and that possibly it would not have been so without that provision. Section 57 is not, however, referred to in the judgments.

The question, as has been seen, is one of great difficulty, and weighty authorities can be referred to on both sides, but it is submitted on the whole that the consideration which has, in any of the cases now to be cited, been held sufficient to bring the transaction there dealt with within the purview of the Stamp Acts, will be sufficient to make a similar transaction a "transfer on sale" within the meaning of the present Act, even where the consideration does not consist of, or comprise, a payment in actual money. The provisions of s. 32 of the present Act, *infra*, p. 258, to some extent favour this view.

As to the meaning of "consideration" where the word is used in the present Act, *vide infra*, p. 259.

(1) *Formation or Amalgamation of Companies.*—Upon the conversion of a firm into a limited company, the persons interested in the business and property of the firm as joint tenants without survivorship, or as tenants in common, in consideration of shares and debenture-stock of the company, conveyed to the company (*inter alia*) the real estate and trade marks of the firm; and the conveyance was held to be "a conveyance or transfer on sale of

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Upon the dissolution and reincorporation of a gas company by a Special Act which vested in the new company, in consideration of its taking over the liabilities of the old company and of certain stock, the lands, buildings, easements, and other rights over land of the old company (together with its chattels and business), the property was held to be "vested by way of sale" in the new company, within the meaning of the Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12, and a copy of the Special Act was therefore held liable to the duty payable on a conveyance on sale under the Stamp Act, 1891 (*A.-G. v. Felicitstone Gas Co.*, [1907], 2 K. B. 984). The amalgamation of two railway companies, the smaller company transferring its whole undertaking to the larger in return for stock of the larger company, and then ceasing to exist, has been held to constitute a conveyance or transfer on sale both under the Stamp Act, 1850 (13 & 14 Vict. c. 97), Sched. (*Furness Rail. Co. v. Inland Revenue* (1864), 33 L. J. Exch. 173), and under the Stamp Act, 1891 (*Great Western Rail. Co. v. Inland Revenue*, [1894] 1 Q. B. 507). If the view expressed *supra*, p. 63, that a transaction may be a transfer on sale under this Act though no actual money passes, is right, the transactions which formed the subjects of the above cases would appear all to be transfers on sale within the meaning of s. 1.

A share in a company, though the company holds land, does not appear to be an "interest in the land" within the meaning of s. 1 of the present Act (see notes to s. 41, definitions of "land" and "interest," *infra*, pp. 305, 308), for a share in a company is personal estate, and is not of the nature of real estate (Companies (Consolidation) Act, 1908, s. 22 (1)). When, therefore, upon the combination of two companies, the purchasing company acquires the shares of individual shareholders in the selling company instead of acquiring the whole undertaking of the selling company, the transaction would not appear to be a "transfer on sale" of the fee simple or any interest in the land within the meaning of s. 1, in spite of the fact that it is a conveyance or transfer on sale within the Stamp Acts, which deal with personal property as well as land (*Coats v. Inland Revenue*, [1897] 2 Q. B. 423; *Chesterfield Brewery Co. v. Inland Revenue*, [1899] 2 Q. B. 7). This would appear, therefore, so far as increment value duty is concerned, to be a more favourable method to employ than that previously discussed, in cases where one company is acquiring the landed property of another (always assuming that transactions of this kind are "transfers on sale," as is suggested *supra*, pp. 62, 63.)

(2) *Dissolution of Partnership*.—Where land (freeholds, copyholds, leaseholds) is held by a partnership, and one partner on retirement releases and assigns his interest therein to the remaining partner, the release and assignment have been held to constitute a conveyance on sale under the Stamp Act, 1850, both where the consideration was in part cash, in part a mortgage of assets, and in part an assignment of insurance policies (*Christie v. Inland Revenue* (1866), L. R. 2 Ex. 46), and where it consisted wholly in a definite

sum appropriated out of the assets (other than real) of the partnership (*Phillips v. Inland Revenue* (1867), *ibid.* 399). Where, on the other hand, the retiring partner retains his share of the assets of the firm, there is no sale, even though a money payment has to be made in order to equalize the shares of the retiring and the remaining partners (*MacLeod v. Inland Revenue* (1885), 12 R. 445; cf. cases cited under "Family Arrangements," *infra*, p. 67).

(3) *Acquisition under Lands Clauses Acts*.—Where land is acquired by the procedure of the Lands Clauses Acts, the conveyance is a conveyance or transfer on sale within the Stamp Act, 1870. This was decided in connection with s. 48 of the Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), *Inland Revenue v. Glasgow and South Western Rail. Co.* (1887), 12 A. C. 315; that section is, so far as here material, in the same terms as s. 49 of the (English) Lands Clauses Act, 1845; and the same principle will doubtless apply when compensation is assessed under the English Act (if any land or any interest therein is actually taken for the works). An acquisition of land by means of any of these provisions would appear to be a transfer on sale within s. 1 of the present Act. The question how much of the compensation paid under those Acts is included in the consideration for the sale of the land is discussed *infra*, p. 261.

But on the other hand, where a colliery company in pursuance of a "counter notice" received from a railway company under s. 78 of the Railways Clauses Act, 1845, refrains from working mines or minerals, and receives compensation, there would appear to be no transfer on sale within the present Act, for there is no sale of "property" or "estate or interest in any property" within the meaning of the Schedule to the Stamp Act, 1891, read with s. 60 (*Great Northern Rail. Co. v. Inland Revenue*, [1899] 2 Q. B. 652; [1901] 1 K. B. 416). Nor would there appear to be a "transfer on sale" when compensation is assessed for mines or minerals under the corresponding s. 22 of the Waterworks Clauses Act, 1847; nor when it is assessed under s. 68 of the Lands Clauses Act, 1845, for injuriously affecting lands when no land or interest in land is actually "taken." See case cited on the latter section under "Interest," *infra*, p. 311.

(4) *Other Acquisitions by Companies*.—Examples of acquisition of various undertakings by companies under bargains of a less usual character than those dealt with, *supra*, constituting "transfers on sale," will be found in *Plymouth Great Western Dock Co. v. Inland Revenue* (1858), 22 L. J. Ex. 188; *Inland Revenue v. North British Rail. Co.* (1902), 4 F. 27, *infra*, p. 263; *Underground Electric Railways v. Inland Revenue*, [1906] A. C. 21, *infra*, p. 265.

(5) *Declaration of Trust*.—Where a sale is carried out by means of a declaration of trust in favour of the purchaser, such a declaration is a conveyance in pursuance of sale, and s. 54 of the Stamp Act, 1891, applies to it (*West London Syndicate v. Inland Revenue*, [1898] 1 Q. B. p. 240, *per* CHANNELL, J. (not reversed on this point, [1898] 2 Q. B. 507), *infra*, p. 227; *Chesterfield Brewery Co. v. Inland Revenue*, [1899] 2 Q. B. 7, *infra*, p. 260). It appears therefore that a transaction embodied in such a document may be a "transfer on sale" within the present Act.

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(6) *Foreclosure Orders and Conveyances thereon*.—A conveyance in pursuance of an order foreclosing an equitable mortgage is a "conveyance on sale" within s. 54 of the Stamp Act, 1891, *Huntington v. Inland Revenue*, [1896] 1 Q. B. 422; and though after the decision in that case it was enacted, "for the removal of doubts," that these words include a "decree or order for, or having the effect of an order for, foreclosure" (Finance Act, 1898, 61 & 62 Vict. c. 10, s. 6), it appears that such a decree or order was within the words of s. 54 even before this declaratory enactment was passed (*In re Lovell and Collard*, [1907] 1 Ch. 249). A decree, under the Heritable Securities (Scotland) Act, 1894 (57 & 58 Vict. c. 44), s. 8, is a "conveyance on sale" within ss. 54, 57 of the Act of 1891 (*Inland Revenue v. Tod*, [1898] A. C. 399). It appears, therefore, that a transfer effected by any of the methods above referred to is a "transfer on sale" within the present Act.

Note, however, that a sale constituting merely a security for debt is not intended to come within the purview of the Act (Right Hon. R. B. Haldane, on behalf of the Government, Commons Debates, Official Report, 1909, Vol. 6, col. 1865); and cf. the definition of "lease" in s. 41, *infra*, p. 302. "The term "sale" is only applied to cases where the whole right of the vendor is transferred . . . not to cases where he creates a new or limited right in consideration of a money payment; thus a mortgage or lease is not a sale" (Sweet, Law Dict.).

(7) *Assignments of Leases*.—These appear to be "transfers on sale" of an interest in the land (see definition, s. 41, *infra*, p. 302), and cf. s. 11, *infra*, p. 119, which excuses the payment of increment value duty upon the transfer on sale of a lease of a tenement, etc.; leaseholds formed part of the property conveyed in *Christie v. Inland Revenue*, *supra*, p. 64; and a lease operated as the conveyance of an interest under a building agreement in *A.-G. v. Brown* (1849), 18 L. J. Ex. 336.

By virtue of the definition in s. 41, *infra*, p. 302, an interest in relation to land does not include "any leasehold interest under a lease for a term of years not exceeding fourteen years." The phrase "term of years" in s. 41 appears to mean the term for which the lease was granted and not the period of years which is unexpired at a given date. Consequently, it would appear that if a lease is granted for a term of years exceeding fourteen years, the assignment of such a lease at any time during the term is an occasion on which increment value duty is due, although the lease may no longer have more than fourteen years to run at the date of the assignment. See also the note on "term of years," *infra*, p. 69.

Example.—A grants a lease of land to B for a term of twenty-one years. Increment value duty is payable on the occasion of the grant. After ten years B assigns his leasehold interest to C; the assignment appears also to be an occasion on which increment value duty is due, although only eleven years of the term are unexpired.

(8) *Agreement for a Conveyance*.—It appears doubtful whether an agreement for a conveyance (or an agreement for the assignment of a lease), constitutes a transfer on sale within the meaning

of s. 1. As was pointed out by LINDLEY, L.J., in *Inland Revenue v. Angus* (1889), 23 Q. B. D. p. 597, the distinction between an agreement and a conveyance is well known to every lawyer. That decision did not, however, deal with land or any interest therein; and though it is true that, in consequence of it, the Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 15, and subsequently the Stamp Act, 1891, s. 59, were passed, by which certain agreements for sale were made liable to stamp duty, these enactments did not declare such agreements to be conveyances on sale, still less to constitute transfers on sale. The provisions of s. 4(7) of the present Act (*infra*, p. 90), seem, however, to suggest that the execution of an agreement for a transfer is a "transfer on sale" within the meaning of s. 1. By s. 41, "lease" includes an agreement for a lease, *infra*, p. 302.

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(9) *Family Arrangements*.—Transactions entered into in pursuance of, or as part of, family arrangements have not usually been considered (under Stamp or Succession Duty Acts) to be transactions by way of sale; e.g. a conveyance of land by a father to a son in consideration of natural love and affection, and of a bond to augment by £1500 the portions of the daughters (*Denn v. Manifold* (1825), 4 B. & C. 245); a marriage settlement where both parties brought money into settlement (*Massy v. Nanney* (1837), 3 Bing. N. C. 478; cf. *Lord Advocate v. Sidgwick* (1877), 4 R. 815); a conveyance by a father of lands and a business to himself and his son when taking his son into partnership, *Brown v. Att.-Gen.* (1899), 79 L. T. 572; a deed of partition between several members of a family where one member took certain lands in exchange for an undivided share in those and other lands, and paid a sum of money in order to make the bargain equal (*Henniker v. Henniker* (1852), 22 L. J. Q. B. 94); cf. *MacLeod v. Inland Revenue*, *supra*, p. 65; *Christie v. Inland Revenue*, L. R. 2 Ex. at p. 51, *supra*, p. 64, where KELLY, C.B., pointed out that, in such cases as those above summarized, the payments made did not constitute the consideration at all. But in a recent case where the tenant for life of certain lands conveyed to his remainderman certain unsettled freeholds and copyholds (together with personal property) in consideration of an indemnity against a mortgage-debt and of the release of another debt, the conveyances executed were held to be conveyances on sale, in spite of the fact that they formed part of a family arrangement, and that the purchaser might have been moved to enter into the arrangement by a desire to preserve the estate intact (*Bristol (Marquess) v. Inland Revenue*, [1901] 2 K. B. 336). It would appear therefore that a transaction forming part of a family arrangement may, nevertheless, be a "transfer on sale" under the present Act, if the primary considerations for the transaction are of a monetary nature.

(10) *Legacies*.—When land or an interest in land is taken in satisfaction or part satisfaction of a money legacy, there would appear to be a transfer on sale within s. 1; cf. *Dawson v. Inland Revenue*, [1905] 2 Ir. R. 69.

(11) *Redemption of Ground-Rents*.—Where land is sold on the condition that a ground-rent (or ground-annual or feu duty) shall be paid, but that on payment of a fixed sum the ground-rent shall

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or may be redeemed, the redemption by payment of the fixed sum is not a conveyance on sale under the Stamp Act, 1870. The only sale took place when the conditions above mentioned were entered into in the first instance (*Belch v. Inland Revenue* (1877), 4 R. 592; *Gibb v. Inland Revenue* (1880), 8 R. 120).

(12) *Way-leaves*.—If a way-leave is an “interest in land” it would appear that where a way-leave is granted in return for the payment of a lump sum, a “transfer on sale” takes place. But in view of the inclusion of both “transfer on sale” and “lease” in s. 1 (a), it is submitted that the grant of a way-leave for a periodical payment (either of an annual fixed sum or of a sum of so much per ton) cannot be said to constitute a “transfer on sale.” It is submitted also (cf. notes, p. 309) that such a transaction does not constitute a lease of land. Where increment value duty is leviable in respect of a way-leave connected with any mineral (not being one of the substances mentioned in s. 20 (5)), the duty will be levied as an annual duty under s. 22 (3), *infra*, p. 180. As to way-leaves see also pp. 194, 198, *infra*.

Interest in the Land.—“Interest in relation to land” is defined in s. 41; see note thereon. Reading that definition into s. 1, increment value duty may be leviable upon the occasion of the transfer on sale or passing on death or upon the holding by a body corporate or unincorporate, of an undivided share in a fee simple in possession, or of a reversion expectant on the determination of a lease, but not of any of the matters which are excluded from the definition. It is, however, suggested that in certain circumstances, easements, tolls, and sporting rights, even though not themselves “interests in relation to land,” may necessitate the holding of land in order to their enjoyment, or may add to the value of the land in respect of which increment value duty is due. See also notes on “licenses to trade,” “licenses to dig,” “shares in a company or firm.” As to tenements, flats, and dwellings, see s. 11, *infra*, p. 119, and note under s. 41. As to copyholds, see s. 40. As to assignments of leases, *vide supra*, p. 66.

The Commencement of this Act.—The Act commenced immediately on the expiration of the day on which it received the Royal assent; see p. 58, *supra*. No date is specified in the Act for its commencement, and by the Acts of Parliament (Commencement) Act, 1793, 33 Geo. 3, c. 13, it is enacted “That the Clerk of the Parliament shall indorse . . . on every Act of Parliament . . . immediately after the title of such Act, the day, month and year, when the same shall have passed, and shall have received the royal assent; and such endorsement shall be taken to be a part of such Act, and to be the date of its commencement, where no other commencement shall be therein provided.” As to the effect of the Act of 1793, see *Rex v. Smith*; *Rex v. Weston*, [1910] 1 K. B. 17.

By the Interpretation Act, 1889, s. 36—

“(1) In this Act, and in every Act passed either before or after the commencement of this Act, the expression ‘commencement’ when used with reference to an Act, shall mean the time at which the Act comes into operation.

"(2) Where an act passed after the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day."

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Lease of the Land.—"Lease" is defined in s. 41. Note that nothing is said about the lease of an interest in the land, and that as "interest in the land" appears in the first part of the paragraph the omission here of the phrase is apparently intentional, and therefore it appears not to be intended to levy the tax on the occasion of the grant of a lease of an interest. See "Interest in the land," *supra*, p. 68. As to flats and tenements, see s. 11, *infra*, p. 119. As to copyholds, see s. 40 and notes thereon.

Term of Years.—See the definitions of "lease," "term," and "owner," in s. 41 and notes thereon, *infra*, p. 305.

When Term Commences and Ends.—In order to ascertain the term of years granted by a particular lease, the lease must be construed according to the intention of the parties when they entered into it (*Pugh v. Leeds (Duke)* (1777), 2 Cowp. p. 725; *Bird v. Baker* (1858), 1 E. & E. 12). It is submitted, however, that, as a general rule, where a period of time is actually specified in the lease, the "term of years" for the purpose of s. 1 (a), will be the period so specified; and that even if, by reason of the use of the word "from" such and such a date in the *habendum* of a lease expressed to be for fourteen years, the term granted by the lease might for certain purposes be held to expire at the last moment of the fourteenth anniversary of the day on which it commenced (cf. *Ackland v. Luttley* (1834), 9 Ad. & E. p. 894), such a lease would nevertheless be held to be "for a term of years not exceeding fourteen years" within the meaning of this section. A lease expressed to be for fourteen years and specifying the day "on" which it is to commence, is, it can scarcely be doubted, a lease for a term of years not exceeding fourteen years. Cf. *Sidebotham v. Holland*, [1895] 1 Q. B. 378. On the other hand, where the lease states that the premises are to be held from an earlier date than that on which the lease is executed, the earlier date defines the duration of the term, although no interest passes until the execution (*Shaw v. Kay* (1847), 1 Ex. 412, *per* PARKE, B.; *Bird v. Baker*, *ubi supra*). It is submitted, therefore, that the duration of the term would in such a case be calculated for the purposes of s. 1 (a) from the earlier date, and not from the date of the execution.

What is included in the "Term."—A lease expressed to be for a term of years, but determinable at some earlier period, is a lease for the longer term, and therefore a lease for twenty-one years determinable at the expiration of fourteen years appears to be a lease for a term of years exceeding fourteen years (*Bird v. Baker*, *ubi supra*). But it is a more difficult question whether a lease for seven, fourteen, or twenty-one years determinable at the end of each such period is (when granted) a lease for a term of years not exceeding fourteen years. Such a lease when granted is at least a lease for seven years; if it continues after the seven years, it is for

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fourteen years; if after the fourteen years, for twenty-one years (*Ferguson v. Cornish* (1760), 2 Burr. 1032, as explained in *Goodright v. Richardson* (1789), 3 T. R. 462). These decisions leave the present point untouched; but as, by the definition of "term" in s. 41, a lease which contains a covenant to renew is deemed to be for the period for which the lease may be renewed, it may be inferred that it is intended by s. 1 (a) to levy increment value duty on the grant of a lease determinable at seven, fourteen, or twenty-one years as last described.

A lease which demises premises for a term, with a stipulation that the lessee may remain on for a further term if he gives notice, has been decided under the Statute of Frauds, 29 Car. 2, c. 3, s. 2, to be a lease for the term of years specified, not including the period to which it may be extended (*Hall v. Hall* (1877), 2 Ex. D. 355). But by the definition in s. 41 of the present Act, such a lease would appear for the purpose of s. 1 (a), to be a lease for a term of years including that to which the lessee may extend it. And where a definite term of years is granted, with a stipulation that, upon notice not to determine, the tenant may stay on from year to year, (as in *Brown v. Trumper* (1858), 26 Beav. 11), the lease would appear by the definition, to be a lease for a term one year longer than the definite term specified, because a lease from year to year does not create a tenancy necessarily for more than one year (*Doc v. Mainby* (1847), 10 Q. B. 473).

It is submitted that a lease for a life or lives is not a lease for a term of years within the meaning of s. 1 (a), and that, therefore, increment value duty is always leviable upon the grant of such a lease for lives, even though the "term" for which the lease is granted, computed according to the definition in s. 41, does not exceed fourteen years; but this point is by no means clear. As to the application of this part of the definition, cf. s. 14 (2) (3), *infra*, p. 128.

The use of the phrase "a lease for a term of years" appears to preclude the possibility of including here the term of a reversionary lease; thus, if a lease is granted for fourteen years, and another lease is granted to the same lessee for a further term of fourteen years commencing immediately on the expiration of the first lease, increment value duty would not appear to be due upon the grant of either lease, unless indeed the transaction were merely a collusive one, entered into in order to avoid the duty. But the matter is one of some difficulty. See the notes on "term" and "owner" in s. 41, and the notes to s. 14, *infra*, p. 129.

Duty Leviable under s. 1 (b).—This duty, leviable on the occasion of death, is in addition to the duty levied upon transfers on sale, etc., under s. 1 (a); and it is, therefore, no answer to a claim for duty upon the occasion specified in s. 1 (b) that duty has already been paid or claimed under s. 1 (a). Duty is not however required to be paid a second time in so far as it has already been paid on a previous occasion, *vide infra*, p. 74.

The amount of increment value upon which duty is leviable under para. (b) is determined by s. 2 (1), read with s. 2 (2) (c), *infra*, p. 76.

Provision for the collection of the duty due on an occasion described in s. 1 (b) is contained in ss. 3, 5, *infra*.

As to "governing body," where this expression signifies an individual, *vide infra*, p. 280.

As to copyholds, see s. 40, *infra*, p. 298.

An allowance against estate duty in respect of the duty leviable under s. 1 (b) is provided for by s. 62, *infra*, p. 365.

Property passing on the Death of the Deceased, etc.—Sections 1 and 2, (1) (a) (b) and (c), and (3) of the Finance Act, 1894, are set out in the Appendix, *infra*, p. 334, together with other sections of that Act, and in the notes to ss. 1 and 2 are set out cases decided thereunder, which relate to land or interests in land, or which appear material with regard thereto. Section 2 (1) (c) of the Finance Act, 1894, incorporates with modifications the provisions of s. 38 of the Customs and Inland Revenue Act, 1881, as amended by s. 11 of the Act of 1889; these sections, so far as material, are set out, *infra*, p. 325. The subsequent enactments which are referred to in the text as amending ss. 1, 2 of the Finance Act, 1894, so far as these are already on the statute book, appear to be ss. 14 and 15 of the Act of 1896, s. 11 of the Act of 1900, and ss. 55-64 of the present Act; these are also set out *infra*, p. 360. But the words are wide enough to include amendments made in the future, after the passing of the present Act.

As to property passing on death, which comprises settled land in which the deceased or any other person had an interest ceasing on the death of the deceased, see s. 3 (4), *infra*, p. 84.

Duty Leviable under s. 1 (c).—Increment value duty is imposed by this paragraph upon bodies corporate as an equivalent to that imposed upon the death of individuals by paragraph (b), because being endowed with the capacity of perpetual succession they would otherwise escape an equivalent payment. It is imposed on unincorporate bodies for a similar reason, because these bodies on many occasions escape liability to the duty under the Finance Act, 1894, and would so escape liability to a payment equivalent to that imposed by paragraph (b). But paragraph (c) does not exclude bodies corporate or unincorporate from the operation of paragraph (b); and by confining its operation to the fee simple of the land or the interest held in such manner or on such permanent trusts that it is not liable to death duties (cf. s. 12 of the Customs and Inland Revenue Act, 1885, *infra*, p. 326), implies that when any land or interest passes on the death of the deceased within the meaning of paragraph (b) (*vide note, supra*, p. 71, and *Att.-Gen. v. Cobham* (1904), 20 T. L. R. 337, *infra*, p. 341), to any body corporate or unincorporate, or when any land or interest is held by such a body in such a manner that it is liable to death duties and passes on death, then the duty leviable under paragraph (b) will be leviable in the same way as when property passes to an individual. Such a case may possibly arise where the body in question holds any land or interest as a mortgagee or trustee (Commons Debates, Official Report, 1909, Vol. 12, col. 205). As to death duties other than estate duty, see "Body unincorporate," *infra*, p. 73. The duty leviable on the

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Sect. 1. occasions specified in paragraph (a) is also leviable from bodies corporate and unincorporate, see s. 6 (5) *infra*, p. 102; but it is not payable in so far as duty has been paid on a previous occasion, *infra*, p. 74.

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s. 1 (c).**

The amount of increment value upon which duty is leviable under paragraph (c) is determined by s. 2 (1) read with s. 2 (2) (d), *infra*, p. 76; and the collection and recovery of the duty so leviable are dealt with in s. 3 and s. 6.

As to copyholds, *vide infra*, p. 298.

Exemptions for certain bodies corporate or unincorporate in respect of the duty chargeable on these periodical occasions are contained, as to land used for games, etc., in s. 9, p. 117, as to rating authorities, in s. 35, p. 277, as to governing bodies, registered societies, etc., in s. 37, p. 280, and as to statutory companies, in s. 38, p. 287.

Body Corporate.—"A body politike . . . is also called a corporation, or a body incorporate, because the persons are made into a body, and are of capacity to take and grant, etc. . . . Every body politike, or corporate is either ecclesiastical or lay; ecclesiastical, . . . as bishops, deanes, archdeacons, parsons, vicars, etc.; lay, as maior and communaltie, baylives, and burgesses, etc. . . . And, again, it is either sole or aggregate of many" (Co. Litt. 250a). The present provision makes no distinction between bodies corporate, ecclesiastical or lay, aggregate or sole. Consequently all bodies corporate, of whatever kind, appear to be liable to the increment value duty (and, indeed, to the other duties imposed by Part I.) except so far as they are exempted by the special provisions now to be mentioned.

As to the exemption of the Crown, *vide supra*, p. 61.

Ecclesiastical bodies corporate (whether aggregate, as a dean and chapter, or sole, as a bishop, rector or vicar) are, it is submitted, "governing bodies" as defined in s. 37, *infra*, p. 280, in which corporations sole are expressly included, and are, therefore, entitled to the exemption created by that section, which also applies to many other bodies corporate and unincorporate.

Many rating authorities as defined by s. 35 (2) (such as borough councils, boards of guardians, and so on) are bodies corporate; and whether corporate or unincorporate they will enjoy the exemption created by s. 35 (1), *infra*, p. 277.

Companies incorporated by charter, by letters patent, by Special Acts (as are most of the great railway companies and many others which render public services), and under the Companies Acts are bodies corporate within the ordinary meaning of the words; and there is nothing in this Act to qualify their ordinary meaning. Such companies appear, therefore, to be liable to duty under s. 1 (c), except in cases where they are entitled to exemption under s. 38, *infra*, p. 287.

The exemption created by s. 37, and already referred to, extends to "registered societies" as there defined, which are, in many cases, bodies corporate, as well as to certain companies under the Companies Acts, and to certain bodies of persons incorporated by Special Acts.

The words "as defined by s. 12 of the Customs and Inland Revenue Act, 1885," do not qualify the expression "body corporate," as that section is not concerned with such bodies.

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PORATE.

Body Unincorporate.—By s. 12 of the Customs and Inland Revenue Act, 1885:—

The term "body unincorporate" includes every unincorporated company, fellowship, society, association, and trustee, or number of trustees, to or in whom respectively any real or personal property shall belong in such manner, or be vested upon such permanent trusts, that the same shall not be liable to legacy duty or succession duty.

Enactments by which legacy duty is imposed in England and Scotland are as follows:—36 Geo. 3, c. 52, ss. 6, 19; 45 Geo. 3, c. 28, s. 7; 55 Geo. 3, c. 184, s. 2 and sched.; 5 & 6 Vict. c. 82, s. 38; 8 & 9 Vict. c. 76, s. 4; 44 & 45 Vict. c. 12, s. 42. Legacies of certain specific articles to any of the inns of court or any endowed schools are exempted from duty by 39 Geo. 3, c. 73, and this exemption is continued by 55 Geo. 3, c. 184, sched. (end). In Ireland this duty is imposed under 54 Geo. 3, c. 92, s. 22; 5 & 6 Vict. c. 82, ss. 32, 38; 8 & 9 Vict. c. 76, s. 4; 16 & 17 Vict. c. 59, s. 20; 44 & 45 Vict. c. 12, s. 42; 54 & 55 Vict. c. 12, s. 42; 54 & 55 Vict. c. 66, ss. 83, 88. Succession duty is imposed in the United Kingdom by the Succession Duty Act, 1853, 16 & 17 Vict. c. 51; see also 52 & 53 Vict. c. 7, s. 10, and in Ireland see also 54 & 55 Vict. c. 66, ss. 83, 88. Under the Act of 1853, s. 16, a duty is payable where property becomes subject to a trust for any charitable or public purposes, under any disposition which if made in favour of an individual would confer on him a succession; and s. 27 shows that a company or society, if they become entitled, as successors, to real property, may be liable to duty in the same way as a successor in fee simple would be liable. See also as to both legacy duty and succession duty, s. 58 of the present Act. In construing the enactments above referred to, it should be noted that the word "person" in a statute does not necessarily include bodies unincorporate (*Interpretation Act, 1889, s. 19; Curtis v. Old Monkland Association, [1906] A. C. 86*).

Many bodies unincorporate will no doubt enjoy the exemption created by s. 37, *infra*, p. 287. Overseers of the poor may in certain circumstances be a body unincorporate as here defined; but being a rating authority they are exempted from duty by s. 35, *infra*, p. 277.

Periodical Occasions.—The periodical occasions provided in this Act are:—the 5th April, 1914, and the 5th April in every subsequent fifteenth year, 1929, 1944, and so on (s. 6 (1), *infra*, p. 101).

The Duty or Proportionate Part of the Duty.—Special provisions for the collection of increment value duty in respect of minerals are contained in s. 22. See notes thereon, *infra*, p. 182.

The words "a proportionate part of the duty" appear to cover those cases where the occasion on which increment value duty is

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ATE PART OF
THE DUTY.

Section 3 (5) is intended (subject to certain restrictions) to prevent the levy of increment value duty on any occasion where the increment value has increased only by 10 per cent. or less of the original site value, or of the site value on the last preceding occasion for the collection of the duty, as the case may be; and to reduce the increment value to the extent indicated, if the increase has actually been greater. See notes to s. 3 (5), *infra*, p. 86.

Section 14 (4) contains a provision for an allowance in respect of increment value duty, where reversion duty has already been paid in respect of the same benefit, or of a part of the same benefit; and for a corresponding allowance in respect of reversion duty where increment value duty has been so paid. See notes, *infra*, pp. 133, 134. As regards undeveloped land duty, there is provision in s. 16 (3) (*infra*, p. 140) for a reduction in respect thereof, where increment value duty has already been paid; but there is no corresponding provision in relief of increment value duty where undeveloped land duty has been paid first. See also the next note.

So far as it has not been paid on any Previous Occasion.—

Under s. 3 (1) the Commissioners are to give credit for the amount of duty paid on previous occasions (*infra*, p. 83). For this purpose, any duty remitted on any occasion under the provisions of s. 3 (5), (*infra*, p. 84), any duty assessed by the Commissioners under s. 4 (see sub-s. (4), *infra*, p. 89), and any duty assessed by them on account delivered under s. 6 (see sub-s. (4), *infra*, p. 102), shall be deemed to have been paid. So too shall any duty which would, but for the provisions of s. 8 (see sub-s. (5), *infra*, p. 108), have been charged on such site of a dwelling-house or on such agricultural land as is exempted by s. 8; and any increment value duty in respect of the fee simple of or any interest in any land held by or in trust for His Majesty or any department of Government which would have been collected on any occasion had it been held by a private person, s. 10 (1) (*infra*, p. 117). Further, any such duty in respect of any land or interest in land held by a rating authority, which would have been collected from the authority had it not been exempt, shall, for this purpose, be deemed to have been paid, s. 35 (1) (*infra*, p. 277). Credit is also given for deductions from increment value made in respect of capital sums paid for "betterment" under s. 36, *infra*, p. 279. There is no corresponding provision in ss. 7, 9, 11, 37, or 38, and some of those sections contain provisions directly contrary; therefore, when

land which has been exempt under any of those sections from increment value duty becomes liable, the duty appears to be payable upon the whole of the increment value ascertained under s. 2. It has already been pointed out (pp. 70, 71. *supra*) that, although duty may have been paid or assessed under s. 1 (a), it is nevertheless also payable on the occasions specified in s. 1 (b) and s. 1 (c); but the effect of the words now considered is that the duty will, on the two latter occasions, be payable only upon any increment value which has accrued since the duty was assessed or paid on the former occasion. The same principle applies if the tax under s. 1 (b) or s. 1 (c) has been first paid or assessed, and the occasion on which the duty is due under s. 1 (a) arises subsequently.

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HAS NOT BEEN
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Examples.—(1) An estate of 1000 acres passes to B upon the death of A. The original site value is £10,000, and the site value calculated under s. 2 (2) (c) on the death of A is £12,000. The increment value as defined in s. 2 is £12,000 less £10,000, or £2000; and duty is payable on the £2000. Upon the death of B, the property passes to C. Its site value under s. 2 (2) (c) is now £13,000. The increment value is now £13,000 less £10,000, or £3000. But duty has already been paid on £2000 of this sum, and need now therefore be paid only on £3000 less £2000, or £1000.

(2) Take the same estate as in Example (1). C, upon succeeding to the estate, sells 500 acres in fee simple for such a sum that their site value, calculated under s. 2 (2) (a), is £6500. The increment value of the 500 acres would now be £6500 less £5000, or £1500. But increment value duty has already been paid on £1000. It is now, therefore, payable only on £1500 less £1000, or £500. In this illustration it is assumed that (at all material times) every acre is worth exactly as much as every other acre, and that the Commissioners, acting under s. 29 (2), have apportioned the original site value accordingly. In most actual cases the land will not be of uniform value throughout, and the calculation will be more complicated.

(3) A owns 100 acres of land, of which the original site value is £1000. He sells them to B for such a sum that £1200 is found under s. 2 (2) (a) to be the site value on the occasion of the transfer on sale. The increment value is £1200 less £1000, or £200; duty is paid thereon. A new railway is made near the land, and B sells the land to C for £1600. The increment value is now £1600 less £1000, or £600; but as duty has already been paid on £200, it now falls to be paid only on £600 less £200, or £400.

Where, on any occasion on which increment value duty is due, it is proved to the satisfaction of the Commissioners that reversion duty has been paid in respect of any benefit accruing to a lessor, or part of such a benefit, which is identical with the increment value, such sums as they determine to have been paid in respect of the benefit or part of the benefit shall be treated as being also a payment on account of increment value duty (s. 14 (4), *infra*, p. 128). Such sums will, it is submitted, be also treated in the same way upon subsequent occasions on which increment value becomes due.

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Definition of
increment
value.

2.—(1) For the purposes of this Part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this Part of this Act as to valuation.

(2) The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be—

- (a) where the occasion is a transfer on sale of the fee simple of the land, the value of the consideration for the transfer; and
- (b) where the occasion is the grant of any lease of the land, or the transfer on sale of any interest in the land, the value of the fee simple of the land, calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest; and
- (c) where the occasion is the death of any person, and the fee simple of the land is property passing on that death, the principal value of the land as ascertained for the purposes of Part I. of the Finance Act, 1894, and where any interest in the land is property passing on that death the value of the fee simple of the land calculated on the basis of the principal value of the interest as so ascertained; and
- (d) where the occasion is a periodical occasion on which the duty is to be collected in respect of the fee simple of any land or of any interest in any land held by a body corporate or unincorporate, the total value of the land on that occasion to be estimated in accordance with the general provisions of this Part of this Act as to valuation;

subject in each case to the like deductions as are made,

under the general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value.

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(3) Where it is proved to the Commissioners on an application made for the purpose within the time fixed by this section that the site value of any land at the time of any transfer on sale of the fee simple of the land or of any interest in the land, which took place at any time within twenty years before the thirtieth day of April, nineteen hundred and nine, exceeded the original site value of the land as ascertained under this Act, the site value at that time shall be substituted, for the purposes of increment value duty, for the original site value as so ascertained, and the provisions of this Part of this Act shall apply accordingly.

Site value shall be estimated for the purposes of this provision by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such a transfer after the passing of this Act.

This provision shall apply to a mortgage of the fee simple of the land or any interest in land in the same manner as it applies to a transfer, with the substitution of the amount secured by the mortgage for the consideration.

An application for the purpose of this section must be made within three months after the original site value of the land has been finally settled under this Part of this Act.

Increment Value.—These words describe the amount upon which the increment value duty is to be collected (subject to the provisions of s. 3 (5)) on each of the occasions specified in s. 1 (a), (b), (c); but increment value is actually to be calculated on different principles, according as the occasion is of the class described in sub-s. (a), (b), or (c) of s. 1. The increment value is the result of a subtraction; in every case the sum to be subtracted is the original site value, but when the occasion arises under s. 1 (a), the sum from which the subtraction is to be made is to be calculated as provided in s. 2 (2) (a) or (2) (b), as the case may be;

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when under s. 1 (b), it is to be calculated as provided in s. 2 (2) (c); and when under s. 1 (c), as provided in s. 2 (2) (d). Paragraphs (a), (b), (c), and (d) of s. 2 (2) are, however, each of them qualified by the provision for deductions which follows paragraph (d). It is not expressly provided in the Act who is to calculate the increment value, but it is clear that the Commissioners must do so, seeing that under s. 3 (*infra*, p. 83) they have to determine the amount of increment value duty deemed to be unsatisfied on any occasion, and they cannot determine the amount of the duty without previously determining the amount of the increment value on which it is to be collected. As to appeals from the decisions here referred to, see notes to s. 33, *infra*, p. 271.

Where the occasion on which duty is to be collected is the grant of a lease or the transfer of an interest, or where any body corporate or unincorporate holds only an interest, the increment value of the land itself has nevertheless to be calculated, as if it were held in fee simple (*vide infra*, p. 80), but only such a proportionate part of the duty is to be collected as the Commissioners determine under s. 3 (3), *infra*, p. 84.

For the purposes of the collection of duty, certain reductions are made in increment value under s. 3 (5), *infra*, p. 84.

A deduction is to be made from increment value in respect of any capital sum or instalment paid to any rating authority in respect of the matters mentioned in s. 36, *infra*, p. 279.

As to increment value where minerals are the subject of the duty, see notes to s. 22, *infra*, p. 184.

Examples.—Fifty acres of land are held in fee simple by one owner. The original site value of the 50 acres is fixed under s. 27 at £2500. The deductions allowable on each occasion on which increment value duty is to be collected are assumed to be £500 for the whole 50 acres.

(a) The fee simple of the whole 50 acres is sold for £3500; £500 being allowed for deductions, the site value on the occasion is £3000. The increment value of the 50 acres is £3000 less £2500, or £500.

(b) After the sale described in example (a), the whole 50 acres are leased on a 99 years' lease at a rent of £175 a year. If 20 years' purchase be taken as the value of the consideration for the lease, the value of that consideration is £3500. The value of the fee simple is presumably something more, say £4000. (As to the difficulty of calculating the value of the fee simple in such a case, *vide infra*, p. 80.) Deducting £500 as before, the site value on the occasion is £3500, and the increment value £3500 less £2500, or £1000.

(c) After the transactions described in examples (a) and (b), the lessee of the whole grants an under-lease for 21 years of 10 acres of the land at a rent of £40 a year. Suppose the value of the fee simple of the 10 acres to be calculated on the basis of the consideration for the grant of this lease at £1100, and the deduction allowable for the 10 acres to be £100, the site value on the occasion is £1000. The original

site value of the 50 acres is so apportioned by the Commissioners under s. 29 (2), that the portion attributed to the 10 acres now let is £500. The increment value of the 10 acres is £1000 *less* £500, or £500.

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- (d) After the transactions above described, the fee simple of the 50 acres passes on the death of the owner; the principal value as ascertained for the purposes of Part I. of the Finance Act, 1894, is £6500. Deducting £500 as before, the site value on the occasion is found to be £6000. The increment value is £6000 *less* £2500, or £3500.
- (e) After the transactions described in examples (a), (b), and (c), the holder of the 99 years' lease of the 50 acres dies, and the remainder of his leasehold interest passes on his death. The principal value of that interest is ascertained for the purposes of Part I. of the Act of 1894, and the value of the fee simple of the 50 acres, calculated on the basis of that principal value, is £6500. Deducting £500 as before, the site value on the occasion is found to be £6000. The increment value is £6000 *less* £2500, or £3500.
- (f) The owner of the 50 acres is a body corporate or unincorporate. On the 5th April, 1914, the total value of the land on that occasion is £3500. £500 being allowed for deductions, the site value on the occasion is £3000. The increment value on that occasion is £3000 *less* £2500, or £500. On the 5th April, 1929, the total value of the land on that occasion is £5500. With the deduction of £500, the site value on the occasion is £5000. The increment value is now £5000 *less* £2500, or £2500.

In all the cases above supposed, the duty will be collected upon the increment value only in so far as it has not been paid on any previous occasion (*vide supra*, p. 74), and subject to any reduction under s. 3 (5). See examples there given, p. 87.

Land.—See definition in s. 41, *infra*, p. 301. The word "land" includes buildings and certain structures, fixed or attached machinery, and growing timber, and other matters mentioned in s. 25 (2), *infra*, p. 199. See the note on "Deductions," *infra*.

"Occasion on which Increment Value Duty is to be collected."—See "Increment Value," *supra*, p. 77.

"Site Value" and "Original Site Value."—It will be noticed that the words "site value" in s. 2 (2) are used in two entirely different senses. The "site value of the land, on the occasion on which increment value duty is to be collected" is an amount to be ascertained afresh on each such occasion, according to the elaborate definitions in s. 2 (2); the "original site value" is the sum fixed once for all under s. 27 as being the "assessable site value" ascertained upon the principles of s. 25 (4), and finally settled and adopted as the result of the several stages in making the valuation provided by ss. 26 and 27, *vide infra*, pp. 229, 240. A provision for the interim assessment of duty pending the final settlement of this value is contained in s. 27 (6), *infra*, p. 241.

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As to the application of the expression "site value," when used in either of these senses, to minerals, see notes to ss. 22 and 23, *infra*, pp. 187, 192.

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SITE VALUE."

A provision for the apportionment of original site value is contained in s. 29 (2), *infra*, p. 252. In certain cases another sum is substituted for the original site value for the purposes of increment value duty under s. 2 (3); see notes *infra*, p. 81. As to copyholds and customary freeholds, see s. 40, *infra*, p. 298.

Transfer on Sale.—See note to s. 1, *supra*, p. 62.

Fee Simple.—See definition in s. 41, *infra*, p. 303. References to the fee simple in the present section are treated as references to the whole copyhold or customary interest or estate in the case of copyholds of inheritance, copyholds held for a life or lives or for years where the tenant has a right of renewal, and customary freeholds, s. 40 (1) (b), p. 298, *infra*.

Interest in the Land.—See definition in s. 41, and notes thereon, *infra*, p. 308; see also notes at p. 68, *supra*. As to the collection of duty in respect of an interest, see s. 3 (3), *infra*, p. 84.

Consideration.—Section 32 contains provisions for determining the value of any consideration for a transfer or lease, and the meaning of "consideration" is dealt with in the notes to that section, *infra*, p. 259.

Lease of the Land.—See note at p. 69, *supra*, and definition in s. 41, *infra*, p. 302.

Value of the Fee Simple.—See note on "fee simple," *supra*. For the purposes of s. 2 (2) (b) this is to be calculated "on the basis of the value of the consideration for the grant of the lease or the transfer of the interest." The phrase "on the basis of" is extremely obscure, and is not elucidated elsewhere in the Act. The consideration for the grant of a lease or the transfer of an interest is a thing ascertainable under the provisions of s. 32, *infra*, p. 258; but it is very difficult to suggest a principle upon which the value of the fee simple can be calculated on the basis of that consideration. It is true that the consideration for the grant of a 999 years' lease will in most cases be practically the same as the value of the fee simple. But the consideration passing on the grant, say, of a lease for twenty-one years, or on the assignment of the unexpired portion of such a lease (see p. 66, *supra*) appears to have no relation in principle to the value of the fee simple. The two things can both be expressed in terms of money, no doubt; but it is submitted that any rule for calculating the one from the other must at best be a rule of thumb, and it is not easy to foresee what principle the Commissioners will adopt for this purpose.

These remarks apply equally to the calculation under s. 2 (2) (c) of the fee simple "on the basis of" the principal value of an interest as ascertained for the purposes of Part I. of the Finance Act, 1894.

Property passing on Death.—See s. 1 (b) and notes thereon, *supra*, p. 70.

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VALUE OF
THE FEE
SIMPLE.

Principal Value of the Land.—This is ascertained for the purposes of Part I. of the Finance Act, 1894, under the provisions referred to in the note to s. 5 (*infra*, p. 98) on “assessment, collection, and recovery of estate duty.” Principal value is defined in s. 7 (5) of the Finance Act, 1894, set out *infra*, p. 345, which is however amended by ss. 60-62 of the present Act, *infra*, p. 363. See also s. 3 (2), *infra*, p. 83.

Section (2) (c) appears to mean that the valuation actually made for the purposes of the Act of 1894 as amended is to be adopted for the purposes of this sub-section, and not merely that the value is to be independently ascertained for the purposes of this sub-section according to the same principles as for the Act of 1894.

When Duty is to be Collected from a Body Corporate or Unincorporate.—The site value of the land upon a periodical occasion on which increment value duty is to be collected from such a body (see s. 1 (c)), is the total value of the land on that occasion, estimated in accordance with the provisions of s. 25 (3) (see note on “total value” under that section, *infra*, p. 200), and subject to the deductions allowable under s. 2 (2). It will not necessarily be the same figure as is shown for total value in the valuation made and settled under ss. 26 and 27; for the total value must be separately estimated with relation to the periodical occasion in question as on the 5th April in the year 1914 and in every subsequent fifteenth year (s. 2 (2) (d) read with s. 6 (2) *infra*, p. 101). Where only an interest is held by such body the increment value of the land will be calculated as if the fee simple were held; but only such proportionate part of the duty will be payable as the Commissioners determine, under s. 3 (3), *infra*, p. 84.

Deductions.—In each of the cases provided for by s. 2 (2) (a), (b), (c), (d), the site value on the occasion on which increment value duty is to be collected is reduced by the like deductions as are made for the purpose of arriving at the site value of land from the total value under s. 25 (4). See note thereon, *infra*, p. 224. These deductions cannot, however, be claimed unless the requirements of s. 12 are fulfilled, *vide infra*, p. 121. Provision for the recording of deductions allowed, and for the obtaining of copies of the record, are contained in s. 30, *infra*, p. 255.

The Commissioners.—The Commissioners of Inland Revenue, s. 96 (2), *infra*, p. 323.

As to appeals against the decisions of the Commissioners, *vide* s. 33, *infra*, p. 266.

Relief in Certain Cases of Decline in Value since Acquisition.—Section 2 (3) contains the only provision in the Act which allows for a decrease in the value of land. It provides that in two cases, a sum to be determined by the Commissioners shall be substituted for original site value for the purposes of increment value

Sect. 2. duty; that is to say, as a factor in ascertaining the increment value. See p. 77, *supra*.

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CASES OF
DECLINE IN
VALUE SINCE
ACQUISITION.

In either case, before the relief can be given, the facts must be proved to the Commissioners, on an application made for the purpose, within three months after the "original site value" has been finally settled under s. 27, *infra*, p. 240. Thus, if that value is finally settled on, say 30th May, an application made on 30th August would appear to be in time; see *Radcliffe v. Bartholomew*, *infra*. There is nothing in s. 2 (3) to limit the persons by whom the application may be made.

The first case can arise only where a transfer of the fee simple of the land, or of any interest in the land, has taken place at any time within twenty years before the 30th April, 1909. This appears to mean that the transfer must have taken place on or after 30th April, 1889, cf. *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161. If, in such circumstances, the site value at the time of the transfer (estimated in the case of a transfer of the fee simple, on the principle laid down in s. 2 (2) (a), and in the case of a transfer of an interest, on the principle laid down in s. 2 (2) (b), subject in either case to the deductions allowable under s. 2 (2)), exceeds the original site value finally settled under s. 27, then the site value at the time of the transfer is to be substituted for the original site value, for the purposes of increment value duty.

The second case arises where a mortgage of the fee simple of the land or of any interest in the land has taken place at any time within twenty years before the 30th April, 1909. If, in such circumstances, the site value of the land at the time when the mortgage took place (estimated in the case of a mortgage of the fee simple at the amount secured by the mortgage, and in the case of a mortgage of an interest at the value of the fee simple calculated on the basis of the amount secured by the mortgage of the interest, subject in either case to the deductions allowable under s. 2 (2)), exceeds the original site value as finally settled under s. 27, then the site value at the time when the mortgage took place is to be substituted for the original site value, for the purposes of increment value duty.

In both cases the site value at the time of the transfer or mortgage, as the case may be, will be estimated by the Commissioners. An appeal will lie against a decision of the Commissioners refusing to apply this provision, and against their determination of the site value at the time of the transfer or mortgage, under s. 33, *infra*, p. 266.

In order to get the benefit of the above provision, it may be necessary, where the land transferred on mortgage is not co-terminous with land separately valued, in the valuation made under s. 26, to apply for an apportionment of original site value under s. 29 (2), *infra*, p. 255. But it will be best, wherever it is thought that it may be desirable to have recourse to the provisions of s. 2 (3), to secure a separate valuation of the particular piece of land in question under s. 26 (1), *infra*, p. 229.

Example (a).—A on 30th April, 1889, purchases the fee simple of certain land. The original site value of the land is finally settled under s. 27 at a sum of £3000. On an application

made to the Commissioners under s. 2 (3), they find the value of the consideration for the transfer in 1889 to have been £5000, and estimate the deductions allowable at that time to be £1000; and they therefore estimate the site value at the time of the transfer to be £5000 *less* £1000, or £4000. The sum of £4000 will be substituted for the original site value of £3000 for the purposes of increment value duty. If, in 1915, A sells the land to B for a consideration of £6000, and the deductions then allowable are £1500, the site value on the occasion of the transfer on sale, will be £6000 *less* £1500, or £4500. The increment value on which the duty will be collected will be £4500 *less* £4000, or £500. If the provisions of s. 2 (3) had not been applied, the increment value on that occasion would have been £4500 *less* £3000, or £1500.

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- (b) C in 1890 obtains a loan of £10,000 secured upon a mortgage of the fee simple of certain land. The original site value of that land is finally settled under s. 27 at a sum of £7000. On an application to the Commissioners under s. 2 (3), they find the facts above stated, and estimate the deductions allowable as in 1890 at £2000; they therefore estimate the site value of the land at the time when the mortgage took place to be £10,000 *less* £2000, or £8000. The sum of £8000 will be substituted for the original site value of £7000 for the purposes of the increment value duty. Suppose that in 1915 the land is property passing on death, and the principal value is ascertained under s. 2 (2) (c), at £2000, subject to deductions of £3000. The site value on that occasion will be £12,000 *less* £3000, or £9000. The increment value on which the duty will be collected will be £9000 *less* £8000, or £1000. If the provisions of s. 2 (3) had not been applied, the increment value on that occasion would have been £9000 *less* £7000, or £2000.

3.—(1) On each occasion on which increment value duty is collected on the increment value of any land, such an amount of duty shall be deemed to be unsatisfied as the Commissioners determine, after giving credit for the amount of duty paid on previous occasions. The Commissioners shall make such apportionments and re-apportionments of any duty paid on previous occasions as they think necessary for the purpose of giving effect to this provision.

General provisions as to collection of increment value duty.

(2) Where increment value duty is collected on the occasion of the transfer or passing on death of the fee simple of any land, or on any periodical occasion in the case of land held in fee simple by a body corporate or unincorporate, the whole amount of the duty which is

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(3) Where increment value duty is collected on the occasion of the grant of a lease, or on the transfer or passing on death of any interest in land, or on any periodical occasion in the case of an interest in land held by a body corporate or unincorporate, such proportionate part of the duty shall be collected as may be determined by the Commissioners to be payable in respect of the interest in land created, transferred, passing on death, or held, in accordance with rules made by them for the purpose.

(4) Where on the occasion of the death of any person the property passing on the death comprises settled land in which the deceased or any other person had an interest ceasing on the death of the deceased, then—

(a) if the subject of the settlement at the time of the death is the fee simple of the land, increment value duty shall be collected as if the fee simple of the land passed; and

(b) if the subject of the settlement at the time of the death is any other interest in the land, increment value duty shall be collected as if that interest passed;

but that duty shall not be collected on any such occasion if under the provisions of section five of the Finance Act, 1894, as amended by any subsequent enactment, estate duty is not payable in respect of the settled land.

(5) For the purpose of the collection of duty on the increment value of any land under this section, the increment value shall be deemed to be reduced on the first occasion for the collection of increment value duty by an amount equal to ten per cent. of the original site value of the land, and on any subsequent occasion by an amount equal to ten per cent. of the site value on the last preceding occasion for the collection of incre-

ment value duty, and the amount of duty to be collected shall be remitted in whole or in part accordingly. Sect. 3.

Any duty which by reason of this provision is remitted on any occasion shall not be collected and shall be deemed to have been paid :

Provided that no remission shall be given under this provision on any occasion which will make the amount of the increment value on which duty has been remitted during the preceding period of five years exceed twenty-five per cent. of the site value of the land on the last occasion for the collection of increment value duty prior to the commencement of that period or of the original site value if there has then been no such occasion.

(6) Increment value duty shall be a stamp duty collected and recovered in accordance with the provisions of this Act.

Powers of the Commissioners.—As the Commissioners have, under s. 3, to determine the amount of duty deemed to be unsatisfied, and that amount depends in the first instance on the increment value, it appears that they must determine what is the increment value on the principles laid down in s. 2, although s. 2 does not mention who is to determine it. Section 3 applies to increment value duty generally ; ss. 4, 5, 6, *infra*, to duty leviable on the occasions specified in s. 1 (a), (b), and (c) respectively. As to the interim assessment of duty where the original site value has not been finally settled, see s. 27 (6), *infra*, p. 241.

Any Land.—The duty may be assessed in respect of such pieces of land as the Commissioners think fit (s. 29, *infra*, p. 252).

Duty Paid on Previous Occasions.—See note to s. 1, *supra*, p. 74, “so far as it has not been paid on any previous occasion,” and examples there given.

An appeal appears to lie under s. 33 against any apportionments or reapportionments of duty made under s. 3 (1).

Scheme of Sub-ss. (2) and (3).—Section 2 is intended to provide for the increment value being calculated in every instance for the fee simple of the land, as defined in s. 41, *infra*, p. 303 ; and the scheme of sub-ss. (2) and (3) of s. 3 appears to be, that where the duty is leviable upon the transfer on sale, etc., of the fee simple, the whole duty calculated on the increment value is to be levied ; but where the duty is leviable upon the transfer on sale, etc., of an interest only, then what is to be collected is only a proportionate part of the duty so calculated. In other words, it is the duty, not the value, that is apportioned. See also the note on s. 6 (2), *infra*,

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 AND (3).

p. 101). It does not appear that it is intended by sub-s. (2) to prevent duty being paid in instalments in certain cases; see s. 4 (5), *infra*, p. 90, and s. 6 (8) of the Finance Act, 1894 (which is among the provisions applied by s. 5 of the present Act, *infra*, p. 98), and s. 6 (3), *infra*, p. 101. The Commissioners are to make rules in accordance with which they are to collect the duty, either in whole or in part, as the case may be; the provisions of s. 93 apply to the making of rules under these sub-sections. Most of the phrases used in these sub-sections appear also in s. 1, and are discussed in the notes thereto, pp. 60 *sqq.* As to copyholds, *vide infra*, p. 298.

Settled Land.—Settled land within the meaning of the Settled Land Act, 1882, is defined in s. 2 (3) thereof, set out *infra*, p. 295. But it is not clear whether the phrase, as it appears in s. 3 (5), is to bear that meaning, or whether it means such land as is settled property within the meaning of the Finance Act, 1894, s. 22 (*h*), set out *infra*, p. 351. In most cases, however, the same land would be settled land under either definition. Sub-s. (4) has the effect of applying sub-ss. (2) and (3) to the case of settled land, so that where the subject of the settlement at the time of the death is the fee simple of the land, the collection of increment value duty is regulated by sub-s. (2); and where the subject is any other interest, the collection is regulated by sub-s. (3). Thus, a person succeeding merely to a life interest will have to pay increment value duty as if only that interest passed, and not upon the whole value of the fee simple (Commons Debates, Official Report, 1909, Vol. 12, Col. 259). See the cases cited on the Finance Act, 1894, ss. 1 and 2, *infra*, p. 335. But if s. 5 of the Act of 1894 (as amended) prevents the collection of estate duty when any property passes on death, increment value duty will not be leviable on that occasion. Section 5 is set out in the Appendix, *infra*, p. 342, and is amended by s. 13 of the Finance Act, 1898, *infra*, p. 358, and by s. 55 of the present Act, *infra*, p. 360.

Reduction of Increment Value for the Purpose of Assessing Duty.—Section 3 (5) is aimed at remitting the increment value duty altogether in cases where there has been only a certain small rise in value, and at remitting the duty to the extent of that small rise where the actual rise has in fact been greater. By the proviso, it is sought to prevent evasion of the increment value duty by persons who might take their profit upon the sale or letting of land by a series of small transactions (each showing an increment value below the dutiable limit) instead of one large transaction, which would at once show a dutiable increment value. Note that on the first occasion for the collection of the duty the increment value is reduced by an amount equal to 10 per cent. of the *original site value*; but on subsequent occasions by an amount equal to 10 per cent. of the *site value on the last preceding occasion for the collection of increment value duty*. The two expressions italicized have different meanings, and are discussed at p. 79, *supra*. Section 3 (5) makes no express provision for the amount of the reduction in cases where either upon the occasion on which the reduction is made, or upon the last preceding occasion when

the duty was leviable, duty is levied only in respect of a part of the land. The Commissioners are no doubt able to use the powers of apportionment given them by s. 29, but some of the difficulties arising from the want of such express provision will not be easily soluble; see examples (c) and (d). An appeal lies under s. 33, *infra*, p. 267, against the determination of the Commissioners upon any of the matters which it may become necessary under s. 3 (5) for them to determine. It is thought that s. 3 (5) can best be illustrated by applying it to some of the examples of calculating increment value given at p. 78, *supra*.

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MENT VALUE
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Examples.—(a) This is the first occasion on which increment value duty becomes due. For the purpose of s. 3 (5), the increment value is reduced by 10 per cent. of the original site value of £2500, *i.e.* £250. Duty is payable on £500 *less* £250, or £250.

(b) The last preceding occasion on which increment value duty became due was that in example (a), when the site value was £3000. The increment value has now therefore to be reduced by 10 per cent. of that sum, or £300. Duty is now leviable on £1000 *less* £300, or £700.

(c) Here the reduction of the increment value, if the whole land passed, would be 10 per cent. of £3500, or £350. The reduction would probably be apportioned in the same ratio as the value of the land is apportioned under s. 29. If this were done, the reduction would be £70, and duty would be payable on £350 *less* £70, or £280.

(d) In this case it is submitted that the reduction should be at least £350, as in example (c). It seems doubtful whether the reduction should be anything more than this.

Example to the Proviso.—The original site value of 10 acres of land is £1000. The 10 acres are property passing on death in 1912, their site value on that occasion (under s. 2 (2) (c)) is £1200. The increment value is £200; duty is remitted on 10 per cent. of £1000, or £100. The 10 acres are transferred on sale in 1915; the value of the consideration for the transfer, after making the deductions permissible under s. 2 (2), is £1500. The increment value is £500; duty is remitted on 10 per cent. of £1200, or £120. In 1916, the 10 acres are again transferred on sale, the value of the consideration (calculated as above) being £1600; but for the proviso there would be a remission of duty on 10 per cent. of £1500, or £150. But there have already, during the preceding period of five years, been remissions amounting to £100 and £120, or £220; and another remission in respect of £150 would make the total amount on which duty has been remitted in the five years £370, which is more than £250, or 25 per cent. of the original site value of £1000. Upon this occasion there is therefore no remission of duty under s. 3 (5).

A Stamp Duty.—The insertion of these words has the effect of applying the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), for, by s. 39, "inland revenue" in that Act means the

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"revenue . . . collected or imposed as stamp duties . . . , and placed under the care and management of the Commissioners, and any part thereof." Sections 21-24, 27, 34, 35, appear to apply to legal proceedings in connection with the increment value duty. Under s. 21 (1). "It shall not be lawful to commence proceedings against any person for the recovery of any fine, penalty or forfeiture under any Act relating to inland revenue . . . except by order of the Commissioners and in the name of an officer, or in England in the name of the Attorney-General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney-General for Ireland."

By s. 22 (1), "Any fine or penalty incurred under any Act relating to inland revenue may be sued for and recovered . . . in the High Court.

(2) "The proceedings for the recovery of any such fine or penalty . . . shall be commenced within two years next after the fine or penalty is incurred . . ."

Section 23 relates to the service of process, and s. 24 to evidence; s. 27 authorizes officers to conduct proceedings before justices; by s. 35, the Commissioners and the Treasury may (*inter alia*) mitigate penalties or compound proceedings.

The Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), also applies to all duties for the time being chargeable by law as stamp duties (s. 1), and therefore, *inter alia*, to the increment value duty.

Appeal.—The amount of any increment value duty assessed by the Commissioners, whether under the general words of s. 3 (1) or under the more specific provisions of s. 4 (1), s. 5, or s. 6 (3), may be questioned by a person aggrieved upon an appeal under s. 33; see note on the words "against the amount of any assessment of duty," *infra*, p. 266. The original site value cannot, however, be questioned upon such an appeal, but only on a separate appeal against the determination by the Commissioners of original site value, s. 33 (1), Proviso (b).

Collection
and recovery
of duty in
cases of
transfers and
leases.

4.—(1) On any transfer on sale of the fee simple of any land or of any interest in land, or on the grant of any lease of any land for a term exceeding fourteen years, increment value duty shall be assessed by the Commissioners and paid by the transferor or lessor, as the case may be.

(2) It shall be the duty of the transferor or lessor, on the occasion of any transfer on sale of the fee simple of any land or of any interest in land or on the grant of any lease of any land for a term exceeding fourteen years, to present to the Commissioners, in accordance with regulations made by them, the instrument by

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means of which the transfer or the lease is effected or agreed to be effected or reasonable particulars thereof for the purpose of the assessment of duty thereon, and if the transferor or lessor fails to comply with this provision he shall be liable on summary conviction to a fine not exceeding ten pounds, and to pay interest at the rate of five per cent. per annum on any duty ultimately payable by him as from the date on which the instrument has been executed, but any person aggrieved by any conviction or order of a court of summary jurisdiction under this provision may appeal therefrom to a court of quarter sessions.

(3) Any such instrument shall not, for the purposes of section fourteen of the Stamp Act, 1891, and notwithstanding anything in section twelve of that Act, be deemed to be duly stamped unless it is stamped—

(a) either with a stamp denoting that the increment value duty has been assessed by the Commissioners and paid in accordance with the assessment; or

(b) with a stamp denoting that all particulars have been delivered to the Commissioners, which, in their opinion, are necessary for the purpose of enabling them to assess the duty, and that security has been given for the payment of duty in any case where the Commissioners have required security; or

(c) with a stamp denoting that upon the occasion in question no increment value duty was payable;

but where an instrument is so stamped, it shall, notwithstanding any objection relating to the increment value duty, be deemed to be duly stamped so far as respects that duty.

(4) Any duty assessed by the Commissioners under this section shall be a debt due to the Crown from the transferor or lessor, as the case may be, and for the purpose of calculating the amount of increment value

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(5) Regulations may be made by the Commissioners with respect to the mode in which any instrument is to be presented to them in order to be dealt with under this section, and for dispensing with the presentation of any instrument, or particulars thereof, in cases where arrangements are made for obtaining those particulars through any registry of lands, deeds, or title, or through a Register of Sasines, and with respect to the mode in which any application for a return of duty under this section is to be made; and for the payment of any increment value duty by instalments in the case of any lease or transfer on sale where the consideration is in the form of a periodical payment, and the Commissioners shall deal with any instrument presented to them and allow payment by instalments in accordance with those regulations. The regulations shall provide that where the duty to be collected on the grant of a lease is payable by instalments, and the lease is determined before all such instalments have fallen due, the instalments which have not fallen due shall be remitted, and that in that case the amount of duty which, under this section, is deemed to have been paid shall be reduced by the amount of the instalments so remitted.

(6) In any case where increment value duty shall have been paid under the provisions of this section, but the transaction in respect of which the duty shall have been paid was subsequently not carried into execution, the duty shall be returned to the transferor or lessor on his making application to the Commissioners within two years after the payment of the duty in accordance with regulations to be made by them under this section, and in that case the duty returned shall not be deemed to have been paid for the purposes of this section.

(7) Where any agreement for a transfer or agreement for a lease is stamped in accordance with this section, it shall not be necessary to stamp any conveyance,

assignment, or lease made subsequently to and in conformity with the agreement, but the Commissioners shall, if an application is made to them for the purpose, denote on the conveyance, assignment, or lease the amount of duty paid.

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Object of the Section.—Section 4 deals with the assessment and collection of increment value duty when leviable on the occasions specified in s. 1 (*a*), *supra*, p. 59. The occasions specified in s. 1 (*b*) and (*c*) respectively are provided for in ss. 5 and 6. The provisions of s. 4 are to be read subject to those of s. 3, which apply to all the occasions on which increment value duty is due.

Appeals.—See note to s. 3, *supra*, p. 88.

Transfer on Sale—Land—Interest in Land—Fee Simple—Lease of the Land.—See notes to s. 1, *supra*, p. 60; and definitions in s. 41 and notes thereon, *infra*, p. 305.

Transferor—Lessor.—See definitions in s. 41, *infra*, p. 303.

Incidence of the Duty.—It is provided in sub-s. (1) that the duty shall be paid by the transferor or lessor as the case may be (see also sub-s. (4)); but this appears to mean merely that the money shall be actually paid by him to the Crown, and there appears to be nothing to prevent the transferor or lessor contracting with the transferee or lessee that the latter shall recoup to the former the amount paid. Where, as in s. 19, the Act intends that the person primarily liable for the duty shall not pass his liability on to any one else, it uses the words "shall be borne by that . . . person notwithstanding any contract to the contrary;" no such words appear in s. 4. Where the increment value duty is not specifically mentioned in the contract between the parties, and it is sought by the transferor or lessor to recover from the transferee or lessee the amount paid in respect of the duty, it will have to be gathered from the terms of the contract what was the intention of the parties as to which of them should bear the duty (cf. *Foulger v. Arding*, [1902] 1 K. B. 700). The duty under s. 1 (*a*) is only leviable where the transfer or lease is made in pursuance of a contract made after the commencement of this Act, *vide supra*, p. 59; and it seems highly desirable that contracts so made for transfer or lease should specifically provide which party is ultimately to bear the increment value duty that becomes leviable on the occasion of the transfer on sale or of the grant of the lease. There may often be a difficulty in determining whether it is intended to bring increment value duty within the purview of covenants (especially where the covenant was entered into before the passing of the present Act) where this duty is not specifically mentioned, and only such general phrases are used as: taxes imposed, charged or assessed, upon the premises or on the landlord or tenant in respect of the premises (cf. *Thompson v. Lapworth* (1868), L. R. 3 C. P. 149; *Crosse v. Raw* (1874), L. R. 9 Ex. 209; *Badcock v.*

Sect. 4. *Hunt* (1888), 22 Q. B. D. 145; *Baylis v. Jiggins*, [1898] 2 Q. B. 315; *Foulger v. Arding*, *ubi supra*, taxes and duties payable in respect of the premises (cf. *Tidswell v. Whitworth* (1867), L. R. 2 C. P. 326; *Farlow v. Stevenson*, [1900] 1 Ch. 128; *Bourne and Tait v. Salmon and Gluckstein*, [1907] 1 Ch. 616; *Salamon v. Holford*, [1909] 2 Ch. 602), taxes, assessments and outgoings in respect of the premises (cf. *Crosse v. Raw*, *ubi supra*; *Harris v. Hickman*, [1904] 1 K. B. 13; *Stockdale v. Ascherberg*, *id.* 447). Many decisions upon covenants of this kind will be found collected in *Fawcett on Landlord and Tenant*, 3rd Edn. pp. 382 *sqq.*

As to the power to charge on settled land and land vested in a trustee an amount leviable in respect of this duty, etc., see s. 39 (1) (2) (3); *infra*, p. 293; see also s. 39 (4), as to the power of a mortgagee to add such sums to his security.

The Instrument to be Stamped.—Where an agreement for a transfer or lease is executed, as well as the conveyance, assignment, or lease which carries out the agreement, the effect of sub-ss. (2) and (7) read together appears to be that the transferor or lessor may, at his option, stamp either document with the stamp required by sub-s. (3). If the agreement is stamped, the Commissioners will (upon application) denote on the conveyance, assignment, or lease, the amount of duty paid, sub-s. (7). If, as not infrequently happens, only an agreement is executed, and the parties are content to have no further document, the agreement must of course be stamped as required by sub-s. (3). Sub-section (7) clearly is not intended to release parties from the obligation of having all the documents referred to therein stamped as required by the Stamp Acts; no doubt the language used is wide, but the sub-section must be read with its context. By the definition in s. 41, *infra*, p. 302, "lease" includes an agreement for a lease or under-lease.

Sub-section (6) is apparently intended to cover a case where the agreement for a transfer or lease has been executed, and the parties afterwards depart from their agreement and do not complete the transaction. In such a case, if the duty has been paid on the agreement, it is to be returned to the transferor or lessor on his application, within two years after the payment of duty; as to the meaning of "within two years," see *Radclyffe v. Bartholomew*, *supra*, p. 82. The Commissioners are to provide in regulations made under sub-s. (5) for the mode of application and repayment. Any duty so returned will not be credited against increment value duty on any subsequent occasion, sub-s. (6).

It is submitted that a copy of a special Act may be an instrument by means of which a transfer may be effected within the meaning of s. 4 (1), as in *A.-G. v. Felinstowe Gas Co.*, [1907] 2 Q.B. 984, *supra*, p. 64. Other examples of such instruments will be found in the cases where it has been held under the Stamp Acts that a transfer on sale has taken place, cited in the note on "Transfer on Sale," *supra*, p. 62.

There is no exemption from the increment value duty collected on instruments under this section, by reason merely of the fact that the transfer on sale, or the grant of a lease, effected or agreed to be effected by the instrument, is to the Crown or to any Govern-

ment department, or to any officer on behalf of or for the purposes of the Crown or any Government department, (s. 10 (2), *infra*, p. 117).

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THE INSTRUMENT TO BE STAMPED.

Presentation of Instrument, etc., for Stamping.—The duty to present the instrument is upon the transferor or lessor, as defined in s. 41. Regulations are to be made by the Commissioners as regards the mode of presentation, etc., sub-s. (2) read with sub-s. (5); see also s. 93. As to the matters to be provided for in these regulations, see note, *infra*, p. 98.

Note that the duty to present arises in every one of the cases mentioned in sub-s. (2); even though no increment value has accrued (*vide supra*, p. 76), or though by reason of the operation of s. 3 (5) (*supra*, p. 84), no duty is leviable, or though the transferor or lessor is exempt from duty under ss. 7, 8, 9, or 11, or under ss. 35, 37, or 38, he has still to comply with the requirements of s. 4 (2). When the transferor or lessor has complied with these requirements, it is for the Commissioners to say whether he is liable to increment value duty or not. If he is found by them not to be liable to duty, the Commissioners will stamp the instrument with the stamp described in s. 4 (3) (c).

Failure to comply—Penalty—Summary Conviction.—

Unless the instrument or reasonable particulars are presented (and except in cases where the regulations to be made under sub-s. (5) excuse such presentation) the transferor or lessor will be liable to the penalty laid down in s. 4 (2). But in any case where it is sufficient to present reasonable particulars, and reasonable particulars are presented, it is submitted that no penalty is incurred merely because there is an unintentional omission or misstatement in the particulars presented; the penalty will apparently be incurred if the omission is negligent (cf. *A.-G. v. Till*, [1910] A. C. 50, *infra*, p. 138).

The "duty ultimately payable" can scarcely be determined before proceedings are taken, and possibly not before conviction.

The expression "court of summary jurisdiction" means "any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law." Interpretation Act, 1889, s. 13 (11). It is evident from the wording of the provision for appeal, that the phrase "on summary conviction" as used in s. 4 (2) means "upon conviction before a court of summary jurisdiction." It is submitted that the Summary Jurisdiction Acts will regulate the procedure before the court of summary jurisdiction, and also the manner of appealing to quarter sessions; as to the latter, see ss. 31 and 32 of the Summary Jurisdiction Act, 1879. It is further submitted that a person convicted under this provision may (apart from his right of appeal to quarter sessions) also require a case to be stated for the opinion of the King's Bench Division by the court of summary jurisdiction which convicts him, under s. 33 of the Act of 1879.

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FAILURE TO
COMPLY—
PENALTY—
SUMMARY
CONVICTION.

“Every person who shall aid, abet, counsel, or procure the commission of” an offence under s. 4 (2) of the present Act, would appear to be liable under s. 5 of the Summary Jurisdiction Act, 1848, to the same penalty as the principal offender.

It is submitted that proceedings cannot be instituted except as provided in s. 21 (1) of the Inland Revenue Regulation Act, 1890, *supra*, p. 88; and that they must be commenced within two years next after the penalty is incurred, s. 22 (2).

A punishment is imposed by s. 94 of the present Act (*infra*, p. 322) for knowingly making a false statement or representation for the purpose of obtaining any allowance, etc., in respect of any duty under this Act.

Stamping of the Instrument.—Although it may be sufficient, in certain cases provided for in the regulations to be made by the Commissioners, *vide supra*, p. 92, to present them in the first instance with reasonable particulars, and not with the instrument itself by which the transfer or lease is effected, it is necessary (except in cases where presentation is altogether dispensed with), in order to make the instrument itself admissible in evidence, that it should itself be presented to the Commissioners, and stamped with the stamp appropriate under para. (a) (b) or (c) of sub-s. (3), as the case may be. There is no provision in the Act specifically enabling the Commissioners to require the security referred to in para. (b); but presumably that is one of the matters for which they may provide in the regulations to be made under sub-s. (5).

Section 14 of the Stamp Act, 1891 (which for this purpose is not to be affected by s. 12 of the same Act), enacts as follows:—

“(1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator, or referee of any omission or insufficiency of the stamp thereon, and if the instrument is one which may be legally stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument, or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.”

[Sub-s. (2) provides for the giving of a receipt, and for the destination of money received, under sub-s. (1) and for other matters.]

“(3) On production to the Commissioners of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.

“(4) Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law at the time when it was first executed.”

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STAMPING OF
THE
INSTRUMENT.

As s. 4 (3) of the present Act enacts that an instrument within the scope of s. 4 shall not, unless stamped in accordance with s. 4 (3), be deemed for the purposes of s. 14 of the Stamp Act, 1891, to have been duly stamped, it appears that the right created by s. 14 to get an instrument stamped by the officer of the Court, arbitrator or referee, on payment of the duty and penalty, etc., does not extend to instruments which ought to have been stamped under s. 4 (3) of the present Act. It is suggested, however, although the question is by no means free from difficulty, that s. 15 (1) of the Stamp Act, 1891, applies to instruments which ought to have been so stamped, but have not been so stamped at the proper time. By s. 15 (1), "Save where other express provision is in this Act made, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, and also by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty, at the rate of five pounds per centum per annum, from the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty." By s. 15 (3), it is "Provided that save where other express provision is made by this Act in relation to any particular instrument:

"(a) Any unstamped or insufficiently stamped instrument which has been first executed at any place out of the United Kingdom, may be stamped, at any time within thirty days after it has been first received in the United Kingdom, on payment of the unpaid duty only: and

"(b) The Commissioners may, if they think fit, at any time within three months after the first execution of any instrument, mitigate or remit any penalty payable on stamping."

By s. 15 (4), "The payment of any penalty payable on stamping is to be denoted on the instrument by a particular stamp." Section 15 (2) contains certain provisions as to conveyances on sale and leases, but they deal with the *ad valorem* duty on these documents, and do not appear to affect the duty payable thereon under the present Act, for the person by s. 15 (2) made liable to the penalty is the vendee, transferee, or lessee, whereas the person liable for the duty under s. 4 of the present Act is the transferor or lessor. By s. 122 of the Act of 1891, the expression "instrument" includes every written document.

The concluding words of s. 4 (3) of the present Act are apparently based upon s. 12 (5) of the Stamp Act, 1891, and intended to prevent a court, arbitrator, or referee before whom an instrument chargeable with increment value duty is produced as evidence from going behind the adjudication of the Commissioners, as shown by the stamp affixed under s. 4 (3), (a), (b), or (c), as the case may be.

An appeal appears to lie under s. 33, *infra*, p. 266, against a determination under s. 4 (3) (b) of the Commissioners on the question what particulars are necessary for the purpose of enabling them to assess the duty.

Debt due to the Crown.—As to the application to increment value duty of the Inland Revenue Regulation Act, 1890, and the

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DEBT DUE
TO THE
CROWN.

Stamp Duties Management Act, 1891, see the note on "A Stamp Duty," *supra*, p. 87.

The Crown, in recovering debts due to it, proceeds usually by information in the King's Bench Division. A *Latin* information entails trial by jury of the issue between the Crown and the subject, and the trial is regulated by a procedure, closely approximating that which regulates the trial of common law actions; the trial of an *English* information proceeds upon interrogatories administered by the Crown. A recent example of procedure by *Latin* information will be found in *Att.-Gen. v. Till*, [1909] 1 K. B. 694; [1910] A. C. 50, *infra*, p. 138; by *English* information in *Att.-Gen. v. London County Council*, [1904] 2 K. B. 635; [1907] A. C. 131. The practice in such proceedings is regulated by the Crown Suits Act, 1865 (28 & 29 Vict. c. 104), and the rules for proceedings by *English* information made thereunder on March 14, 1866; and by the Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21), and the rules for proceedings at law on the revenue side of the Exchequer (including *English* informations) made thereunder on June 22, 1860, and November 26, 1861. By R. S. C. 1883, O. LXVIII., r. 2, the following Orders, as far as they are applicable, apply to all proceedings on the Revenue side of the King's Bench Division:—XXVIII. (Amendment). XXXIV. (Special Case), XXXVIII. (Affidavits), LII. (Motions), LVIII. (Appeals), LXIV. (Time), LXV. (Costs), LXVI. (Notices, etc.) LXX. (Non-compliance). O. II., r. 8, is applied to these proceedings by O. LXVIII. r. 2A.

As to costs in proceedings to recover taxes, see the Crown Suits Act, 1855 (18 & 19 Vict. c. 90), and s. 21 of the Queen's Remembrancer Act, 1859. A full account of these proceedings and of the practice is given in Robertson, *Civil Proceedings by and against the Crown*.

Priority of the Duty.—Sub-s. 4 contains no provision (such as those in s. 5 and in s. 15 (1)) making increment value duty due on any of the occasions specified in s. 1 (a) rank *pari passu* with other debts. The increment value duty leviable upon such an occasion appears therefore to be an "assessed tax" within the meaning of s. 1 (1) (a) of the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), and of ss. 107 and 209 (1) (a) of the Companies (Consolidation) Act, 1908, for the term appears to include "duties varying with the value of the property on which they are charged" (Wharton, *Law Lexicon*), although some writers would confine the term to such taxes as those on servants, carriages, and armorial bearings imposed by Part V. of the Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14). If this view is correct, then, under s. 209, in the distribution of the property of a bankrupt, any increment value duty due under s. 1 (a) of the present Act and assessed on the bankrupt up to the 5th day of April next before the date of the receiving order, and not exceeding on the whole one year's assessment, is among the first group of debts payable in priority to all other debts, under s. 1 of the Act of 1888. And in a winding-up, such duty assessed on the company up to the 5th day of April next before the date mentioned in s. 209 (5) of the Act of 1908, and not exceeding in the whole one year's assessment, is among the first group of debts payable in priority to all other debts. The

date mentioned is in the case of a company ordered to be wound up compulsorily, which had not previously commenced to be wound up voluntarily, the date of the winding-up order, and in any other case, the date of the commencement of the winding-up.

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PRIORITY OF
THE DUTY.

By s. 107, where in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under s. 209 payable in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures. This appears to apply by virtue of s. 209 (1) (a) and s. 107 (2) read together, to assessed taxes assessed on the company up to the 5th day of April next, before the date of the appointment of the receiver, or of possession being taken, as the case may be; and, of course, not more in the whole than one year's assessment will have such priority.

In bankruptcy, in admitting a proof for assessed taxes, the court will not go behind the assessment made by the Inland Revenue authorities (*In re Calvert*, [1899] 2 Q. B. 145).

Duty deemed to have been paid against Subsequent Occasions.—See note to s. 1. "So far as it has not been paid on any previous occasion," *supra*, p. 74; and see s. 3 (1). Note also the provisions of sub-s. (5) as to the amount of duty that is to be deemed to have been paid, where a lease is determined before all the instalments of duty have fallen due. Any duty returned under sub-s. (6) will not be deemed to have been paid.

Payment by Instalments.—It is submitted that the regulations for payment by instalments, made under sub-s. (5), must provide for all cases where the consideration is in the form of a periodical payment, either wholly or in part; it can scarcely have been intended to exclude from the privilege of payment by instalments all cases in which any premium is paid. If the words were confined to considerations wholly in such form, it would lead to this absurdity: that a lease granted, say, on payment of £100 premium, and reserving a rent of £100 a year, would not be within the benefit of the provision. As to consideration, generally, and in the form of a periodical payment, see s. 32, and notes thereto, *infra*, pp. 259, 264.

Where the duty is payable by instalments, and the lessor or transferor, who was in the first instance liable for the duty, dies, say, after the first instalments have been paid, the succeeding instalments will apparently be recoverable as they fall due, from the person who is the transferor or lessor (as defined by s. 41, *infra*, p. 303), at the time when each particular instalment falls due. If the lessor after, say, the payment of the first instalment, sells his interest, provision for the payment of future instalments should be made in the contract of sale. These matters may possibly, however, be dealt with in the regulations to be made.

Sect. 4. Regulations to be made under s. 4.—The Commissioners are to make regulations under sub-s. (5) on the following matters:—

(a) The mode of presentation of instruments: it is submitted that this includes prescribing the time when the instruments are to be presented, the cases in which it is sufficient to present particulars, and the particulars which are to be presented in those cases (*supra*, p. 92); the mode in which the Commissioners are to deal with the instrument or particulars presented to them, see sub-s. (5); as well as provisions for requiring the security mentioned in sub-s. (3) (b).

(b) Dispensing with the presentation of instruments or particulars in cases where the arrangements described in sub-s. (5) are made; these arrangements will presumably be made by the Commissioners.

(c) Payment of the duty in instalments in the cases specified in sub-s. (5); and remission of further instalments when a lease is determined before the whole of the instalments payable have fallen due, *supra*, p. 98.

(d) The mode in which application is to be made under sub-s. (6) to the Commissioners for a return of duty paid on a transaction which is subsequently not completed (sub-s. (6), *supra*, p. 90).

In the first line of sub-s. (5) it is said that regulations *may* be made by the Commissioners. But everywhere else in the section, where the regulations are referred to, the word “shall” is used. And it is submitted that, considering the whole form of the section (see especially sub-s. (2)), the Commissioners are not intended to have an option to make regulations, but are bound to make them, and provide in them for the various matters specified in the section, and summarized in this note.

As to the manner in which regulations by the Commissioners are to be made, see s. 93, *infra*, p. 321.

Collection
and recovery
of duty in
case of death.
57 & 58 Vict.
c. 30.

5. The provisions as to the assessment, collection, and recovery of estate duty under the Finance Act, 1894, shall apply as if increment value duty to be collected on the occasion of the death of any person were estate duty; but where any interest in land in respect of which increment value duty is payable is property passing to the personal representative as such, the duty shall be payable out of that interest in land in exoneration of the rest of the deceased's estate, and shall be collected upon an account to be delivered by the personal representative, setting forth the particulars of the increment value in respect of the property:

Provided that in respect of all property of the deceased, other than that assessed to increment value duty, the Crown shall, as a creditor in respect of such increment

value duty, rank *pari passu* with the other creditors of the deceased. Sect. 5.

Object of this Section.—Section 5 provides for the assessment, collection, and recovery of increment value duty upon the occasion described in s. 1 (*b*), *supra*, p. 59; and its provisions are subject to those of s. 3, *supra*, p. 83, which apply to increment value duty generally.

Assessment, Collection and Recovery of Estate Duty.—The provisions here referred to apply to all land or interests in land passing on the death of the deceased within s. 1 (*b*), without modification; except as to any interest in land which is property passing to the personal representative as such, to which they apply with the modifications given in the latter part of the section. See also the note on priority of the duty, *infra*, p. 101.

The provisions which it is intended to apply by this section are apparently, Finance Act, 1894, ss. 3, 6, 7, 8, 11; 1896, ss. 16, 18; 1898, s. 14; 1900, s. 13 (2); 1907, s. 14, and ss. 55-62, and 64 of the present Act; these provisions are set out in the Appendix. It does not appear that the provisions as to aggregation in the Finance Act, 1894, s. 4, apply to the increment value duty under the present Act, as by s. 29 of the latter this duty may be assessed in respect of any such pieces of land as the Commissioners think fit. Neither do s. 12 of the Act of 1894 (as to commutation of duty on interest in expectancy), nor s. 13 (as to composition for death duties) appear to apply. The appeal provisions of the Act of 1894 no longer apply to questions of the principal value of real (including leasehold) property; such appeals are now to be brought in the manner prescribed by s. 33 of the present Act (*infra*, p. 266), see s. 60 (3), *infra*, p. 363.

The provisions as to the assessment of estate duty apply to the ascertaining under s. 2 (2) (*c*), *supra*, p. 78, of the site value on the occasion on which increment value duty is to be collected; but from that sum must be subtracted, in order to ascertain the increment value upon which duty is chargeable, the original site value of the land, which has to be ascertained according to the provisions of s. 27 of the present Act (*infra*, p. 240). Before, therefore, the amount of increment value duty payable on the occasion specified in s. 1 (*c*), (*supra*, p. 59), is fixed, the provisions both of the Act of 1894 as amended and of Part I. of the present Act will have been applied.

As to appeals generally, see note to s. 3, *supra*, p. 88.

Settled Land, etc.—As to powers for charging upon settled land and upon land vested in a trustee, sums paid in respect of increment value duty in respect of such land, and certain expenditure in connection with the valuation thereof, see s. 39 (1), (2), (3), *infra*, p. 293. As to the power of a mortgagee to add such matters to his security, see s. 39 (4).

Interest in Land.—Defined in s. 41, *infra*, p. 302. As to copyholds, *vide infra*, p. 298.

Sect. 5. Property Passing to the Personal Representative as such.—By the Land Transfer Act, 1897, 60 & 61 Vict. c. 65, s. 1,

“(1) Where real estate is vested in any person without a right in any other person to take by survivorship, it shall, on his death, notwithstanding any testamentary disposition, devolve to, and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

“(2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

“(4) The expression ‘real estate’ in this part of this Act shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.”

By s. 24.—“(2) In this Act the expression ‘personal representative’ means an executor or administrator.”

Upon s. 1, see Brickdale and Sheldon’s Land Transfer Acts, 2nd Edn., 252 *sqq.*

It has been held that s. 1 of the Land Transfer Act, 1897, does not apply to the interpretation of the words “property which does not pass to the executor as such” in s. 1 of the Finance Act, 1894, because the Act of 1894 must be construed in view of the law as it stood in 1894, *In re Palmer*, [1900] W. N. 9; *In re Sharman*, [1901] 2 Ch. 280. But that reasoning obviously does not apply here.

As to copyholds and customary freeholds, see s. 40, *infra*, p. 298.

“All leases and terms of lands, tenements, and hereditaments of a chattel quality, are chattels real, and will go to the executor or administrator. All interests for a shorter period than a life, or more properly speaking, all interests for a *definite* space of time, measured by years, months, or days, are deemed chattel interests, and of the nature, for the purposes of succession, of other chattels or personal property. But an estate for one’s own life, or for the life of another, is a freehold.” Williams on Executors, 10th Edn., 512; see pp. 512-521 on this whole subject. A special provision is made in respect of certain estates *pur autre vie*, in The Wills Act, 1837, 1 Vict. c. 26, s. 3.

Leasehold interests and other chattel interests in land may therefore be “property passing to the personal representative as such” within the meaning of the present section; cf. *In re Culverhouse*, [1896] 2 Ch. 251, decided upon s. 9 (1) of the Finance Act, 1894. The words “as such” exclude from the benefit of the provision property passing to any person (who happens also to be the personal representative) in any other capacity.

Account.—In the case of an interest in land which is property passing to the personal representative as such, the duty is payable out of that interest in exoneration of the rest of the deceased’s estate, and shall be collected upon an account to be delivered by the personal representative.

As to such an account, see ss. 6 (3), (4); 8 (3), (14) of the Finance Act, 1894, *infra*, p. 343. See also ss. 12-14 of the Customs and Inland Revenue Act, 1889, *infra*, p. 332.

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ACCOUNT.

As to a false statement in a return, made in order to obtain an allowance, etc., see s. 94 of the present Act, *infra*, p. 322.

It does not appear what are the particulars of increment value which must be included in the account, but these must apparently be sufficient for the purpose of ascertaining "increment value" under s. 2, see note thereon, *supra*, p. 77. The Commissioners will presumably decide what particulars must be given.

Priority of the Duty.—In respect of all property of the deceased other than that assessed to increment value duty, the Crown in respect of the duty ranks *pari passu* with other creditors. A provision to a similar effect, but in somewhat different words, is enacted with reference to reversion duty by s. 15 (1), where its effect is discussed, *infra*, p. 136. In respect of the property of the deceased which is assessed to the duty, the Crown appears to have the same priority as is described under s. 4 (4), *supra*, p. 96.

6.—(1) Where the fee simple of any land or any interest in land is held by any body corporate or by any body unincorporate, as defined by section twelve of the Customs and Inland Revenue Act, 1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, the occasions on which increment value duty is to be collected shall be the fifth day of April in the year nineteen hundred and fourteen and in every subsequent fifteenth year.

Collection and recovery of duty in case of property held by bodies corporate or unincorporate.
48 & 49 Vict. c. 51.

(2) The account to be delivered under section fifteen of the Customs and Inland Revenue Act, 1885, shall, in the case of the account to be delivered in the year nineteen hundred and fourteen and in every subsequent fifteenth year, contain an account of the increment value of the land, as on the preceding fifth day of April, and that section shall, save as in this Act is hereafter provided, apply for the purpose of increment value duty, whether the body corporate or unincorporate are chargeable with duty under Part II. of the Customs and Inland Revenue Act, 1885, or not.

(3) The provisions of sections thirteen to eighteen, of subsection (1) of section nineteen, and of section twenty of the Customs and Inland Revenue Act, 1885 (with the

Sect. 6. — exception of any provisions relating to appeals), shall have effect for the purpose of the assessment and recovery of increment value duty as they have effect for the purpose of the duty charged under section eleven of that Act:

Provided that increment value duty may, if the body corporate or unincorporate chargeable therewith so desire, be paid by fifteen equal yearly instalments, and the first instalment shall be due immediately after the assessment of the duty.

Any part of any duty so payable by instalments may be paid up at any time.

(4) Any increment value duty assessed by the Commissioners on an account delivered in accordance with this section shall, for the purpose of determining the amount of increment value duty to be collected on any subsequent occasion, be deemed to have been paid.

(5) Nothing in this section shall affect the collection of increment value duty on the occasion of the grant of any lease or the transfer on sale of the fee simple of any land or any interest in land by a body corporate or unincorporate, or oblige an account to be delivered of the increment value of any land on any periodical occasion if under the subsequent provisions of this Part of this Act increment value duty in respect thereof is not to be collected on that occasion.

Object of the Section.—Section 3, *supra*, p. 83, provides for the assessment and collection of increment value duty generally. Section 6 enacts further provisions with respect to increment value duty upon the occasion specified in s. 1 (c), *supra*, p. 59; these provisions do not apply to duty leviable from a body corporate or unincorporate on any occasion specified in s. 1 (a), *supra*, p. 59, see s. 6 (5).

Land—Fee-simple—Interest in Land.—See s. 41, and notes thereon, *infra*, p. 395.

Body Corporate—Body Unincorporate.—See notes to s. 1 (c), *supra*, pp. 72, 73. Sub-s. (5) of s. 6 provides that these bodies shall be liable to duty under s. 1 (a), as well as under s. 1 (c).

Occasions on which Duty is Due.—See note to s. 1 (c), *supra*, p. 71.

Increment Value.—See s. 2 (2) (d), and notes, *supra*, pp. 76, 77.

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Exemptions.—By s. 35, rating authorities, etc., by s. 37, “governing bodies,” “registered societies,” etc., and by s. 38, “statutory companies,” are exempted from increment value duty either generally or in respect of certain lands, or on particular occasions, *vide infra*, pp. 277 *sqq.* As to land held for games, etc., by any body corporate or unincorporate, see s. 9, *infra*, p. 117.

Assessment.—When an account has been rendered to the Commissioners in accordance with s. 15 of the Customs and Inland Revenue Act, 1885, set out, *infra*, p. 327, the Commissioners may assess the duty upon the footing of that account (s. 17 (1), *infra*, p. 328). If dissatisfied therewith, they may cause an account to be taken by a person or persons appointed for the purpose, and assess the duty on the footing thereof (s. 17 (1)), with the consequences provided in s. 17 (2). If no account is delivered, the Commissioners must apparently assess the duty before proceeding to recover the penalty under s. 18 (1). As to the account and penalty, see the next note.

Account to be delivered.—This is to be done “save as in this Act is hereafter provided” in accordance with s. 15 of the Customs and Inland Revenue Act, 1885, which is set out *infra*, p. 327.

The bodies referred to in the note on “exemptions,” *supra*, are not under an obligation to deliver an account on any periodical occasion upon which they are excused by the sections there referred to from the payment of increment value duty, Act of 1910, s. 6 (5). There is nothing in this section to exempt bodies corporate or unincorporate (whether liable to increment value duty or not) from sending in the returns required by ss. 26 and 28, *infra*, pp. 229, 250; but see as to statutory companies, s. 38 (2), *infra*, p. 287. And when such a body is the transferor or lessor within the meaning of s. 4, *supra*, p. 88, it must present the instrument or particulars thereof for stamping in the same way as if it were an individual.

The account has to be delivered on or before the 1st October in 1914, 1929, and every subsequent fifteenth year. As to the particulars to be contained in it, see s. 15 of the Act of 1885, and note thereto, *infra*, p. 327. The increment value shown in the account must be calculated as upon the 5th April preceding the delivery of the account (sub-s. (2)).

The account will have to state the increment value (*vide note, supra*), and should claim to deduct specific sums in respect of any of those matters in respect of which a deduction may be allowable under s. 2 (2); but see note on “deductions” under s. 2, *supra*, p. 81, and s. 12, *infra*, p. 121.

In cases where an interest in the land only is held, the increment value of the land will be shown in the account; but only a proportionate part of the duty will be collected, by virtue of the provisions of s. 3 (3), *supra*, p. 84. As to copyholds, see s. 40, *infra*, p. 298.

It does not appear to be the intention of the Legislature that bodies corporate or unincorporate should include in the account (or

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ACCOUNT

TO BE

DELIVERED.

be liable to duty on) property in respect of which they are merely mortgagees, until after foreclosure (Commons Debates, Official Report, 1909, Vol. 8, cols. 83, 84).

Penalty.—The account must be delivered either by the body in question or by an "accountable officer" (Act of 1885, s. 15, *infra*, p. 327), and a penalty for wilfully neglecting to do so is imposed by s. 18 (1) (*cf. Att.-Gen. v. Till, infra*, p. 138). The making of a false statement in order to obtain an allowance, etc., is by s. 94 of the present Act, *infra*, p. 322, made an offence punishable with imprisonment.

Incidence of the Duty.—There appears to be nothing in the present Act or in the incorporated provisions of the Act of 1885, to prevent a body corporate or unincorporate from entering into a covenant with a tenant that the latter shall pay the duty, cf. note on p. 91, *supra*.

Recovery.—The provisions of the Act of 1885 applied by s. 6 (3) are set out *infra*, p. 326. The effect of the application of s. 14 of the Act of 1885 is that increment value duty is made a first charge on property in the hands of bodies corporate or unincorporate or of parties acquiring with notice. Not only the body itself, but every accountable officer (as defined in s. 12) is answerable for the payment of the duty (ss. 14, 16), and is liable for penalties upon non-payment (s. 18 (2)).

The proviso for payment by instalments in s. 6 (3) of the Act of 1910 modifies to that extent the provision in s. 17 (3) of the Act of 1885 that the duty shall be payable immediately after the assessment. Note that the body liable may pay in instalments at its own option and that it does not depend for this right upon any regulations to be made by the Commissioners, as is the case under s. 4 (5), *supra*, p. 90.

As to the power of a mortgagee to add to his security sums paid on account of or in respect of this duty, see s. 39 (4), *infra*, p. 293.

Appeals.—See note under s. 3, *supra*, p. 88.

Duty Assessed deemed to have been Paid.—See note to s. 1. "So far as it has not been paid on any previous occasion" (*supra*, p. 74, and s. 3 (1), *supra*, p. 83).

Exemption
for agricul-
tural land.

7. Increment value duty shall not be charged in respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only :

Provided that any value of the land for sporting purposes, or for other purposes dependent upon its use as agricultural land, shall be treated as value for agricultural purposes only, except where the value for any

such purpose exceeds the agricultural value of the land.

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Agricultural Land.—Defined in s. 41; see notes thereon.

Value for Agricultural Purposes.—The effect in general of this phrase, and the cases in which land may have a higher value than its value for agricultural purposes, are discussed in the notes just referred to. The whole matter of "market value" is discussed in the notes to s. 25, at pp. 206 *sqq.*, *infra*. The insertion in s. 7 of the words quoted makes it clear that by "value . . . for agricultural purposes only" is meant the market value for those purposes at the time with relation to which the duty, if it were payable, would have to be assessed. Beyond this, s. 7 does not show how that market value is to be ascertained. But some principle will have to be adopted for this purpose, and it would at least be giving a consistent interpretation to s. 7 if it were held that all the values here referred to were values ascertained (as far as possible) upon the principles applied to the ascertaining of site value under s. 25 (4), *infra*, p. 201. And such an interpretation would, it is submitted, be in accordance with s. 17 (2), *infra*, p. 155, and s. 26 (1), *infra*, p. 229, and would give to the expression "the value of the land for agricultural purposes" (which appears in those provisions also) the same meaning wherever it occurs in Part I. As to the effect of the phrase "at the time," cf. note, *infra*, p. 205.

It is not intended by s. 7 that, because the land has some value, however small, besides that which it has for agricultural purposes, it shall lose the exemption. It is intended that the exemption shall enure, although the land has a value for other than agricultural purposes, as long as that value is not greater than the value of the land for agricultural purposes (Mr. Lloyd-George, Commons Debates, Official Report, 1909, Vol. 11, cols. 1395-97). But note that it differs from s. 17 (2), *infra*, p. 155, in that s. 7 confers a total exemption on any land to which it applies. Where any land is not totally exempted by s. 7, it receives no relief under this section from increment value duty in respect of its purely agricultural value.

Examples.—(a) A piece of land has a value for agricultural purposes of £100. It has also a value for sporting purposes of £50. The exemption applies.

(b) The same land has a value for building purposes of £80. The exemption applies.

(c) Suppose the same land has a value for building purposes of £150 (instead of £80, as in example (b)). The exemption does not apply.

(d) A piece of moorland has a value of £500 for agricultural purposes (as pasture land); and a value of £1000 for sporting purposes (as a grouse-moor). The exemption does not apply.

(e) Another piece of land has a value of £90 for agricultural purposes, a value of £10 for sporting purposes, and a value of £100 for building purposes. By virtue of the proviso,

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VALUE FOR
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the value for sporting purposes is to be treated as value for agricultural purposes; the whole "value for agricultural purposes" under the section is therefore £90 *plus* £10, or £100. As the value for building purposes is not higher than this, the exemption applies.

(f) Suppose the land in example (c) has the values there mentioned, for agricultural purposes and for sporting purposes respectively; but a value for building purposes of £150. The exemption does not apply.

Sporting Purposes.—This expression is not defined in Part I. It is submitted that it means purposes of the exercise of sporting rights, such as rights of fowling, shooting, taking or killing game or rabbits, or fishing, which are referred to as "rights of sporting" in the Rating Act, 1874, s. 6, *vide infra*, p. 311; and that it does not include such purposes as those of a racecourse.

Purposes dependent on its Use as Agricultural Land.—It is difficult to assign a meaning to this expression. If the amenities of a dwelling-house are dependent on the surrounding land being used as, say, pasture land and on its not being used for the erection of cottages, any value of the surrounding land due to this cause would probably be within the expression (Commons Debates, Official Report, Vol. 12, col. 326). So also would perhaps be the value of land for such purposes as the use of a trainer's gallop, which may depend on the land being grazed by sheep, and so on (cf. notes, *infra*, p. 315).

Ascertainment of Values.—The principles upon which it is suggested that the values mentioned in this section should be ascertained have been indicated *supra*. It may be necessary for each of these values to be ascertained specially as at the time in respect of which the exemption is claimed (see note "at the time," *infra*, p. 205). The site value of the land appears in the valuation made under s. 26, *infra*, p. 229, and the value of the land for agricultural purposes will appear there in certain cases; but the values in that valuation are ascertained as on 30th April, 1909, and may therefore be useless for the purposes of s. 7. There is no provision elsewhere in Part I. for the ascertaining of value for sporting purposes, or for the other purposes mentioned in the proviso to s. 7.

Appeal.—An appeal appears to lie under s. 33 (1), *infra*, p. 266, against a refusal by the Commissioners to allow the exemption created by this section.

Exemption
of small
houses
and proper-
ties in
owner's occu-
pation.

8.—(1) Increment value duty shall not be charged on the increment value of any land, being the site of a dwelling-house, where immediately before the occasion on which the duty is to be collected the house was, and had been for twelve months previously, used by the owner thereof as his residence, and the annual value of the house, as adopted for the purpose of income tax under Schedule A., does not exceed—

- (a) in the case of a house situated in the administrative county of London, forty pounds; and
- (b) in the case of a house situated in a borough or urban district with a population according to the last-published Census for the time being of fifty thousand or upwards, twenty-six pounds; and
- (c) in the case of a house situated elsewhere, sixteen pounds.

(2) Increment value duty shall not be charged on the increment value of any agricultural land where, immediately before the occasion on which the duty is to be collected, the land was, and had been for twelve months previously, occupied and cultivated by the owner thereof, and the total amount of that land, together with any other land belonging to the same owner, does not exceed fifty acres, and the average total value of the land does not exceed seventy-five pounds per acre:

Provided that the exemption under this provision shall not apply to any land occupied together with a dwelling-house the annual value of which, as adopted for income tax under Schedule A., exceeds thirty pounds.

(3) Where a dwelling-house is valued for the purposes of income tax under Schedule A. together with other land, and it is necessary for the purpose of this section to determine the annual value of the dwelling-house, the total annual value shall be divided between the dwelling-house and the other land in such manner as the Commissioners may determine.

(4) For the purposes of this section—

- (a) the expression “owner” includes a person who holds land under a lease which was originally granted for a term of fifty years or more; but in such a case nothing in this section shall prevent the collection of increment value duty so far as it is payable in respect

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of any other interest in the land other than that leasehold interest; and

- (b) the site of a dwelling-house shall include any offices, courts, and yards, and gardens not exceeding one acre in extent, occupied together with the dwelling-house.

(5) Any increment value duty which would, but for this section, be charged shall, for the purpose of the provisions of this Act as to the collection of the duty, be deemed to have been paid.

Increment Value Duty—Increment Value.—*Vide supra*, pp. 59, 76.

Land.—Defined in s. 41, *infra*, p. 301.

The Site of a Dwelling-house.—This is to include “any offices, courts, and yards, and gardens not exceeding one acre in extent, occupied together with the dwelling-house.” Compare with this definition the provisions of s. 17 (4), *infra*, p. 156. It is submitted that the whole of the offices, courts, yards, and gardens must not exceed one acre in extent, and not merely the gardens; but this is not clear.

Under the House Tax Act, 1808 (48 Geo. 3, c. 55), Sched. B, rule 2, “Every coach-house, stable, brewhouse, wash-house, laundry, woodhouse, bakehouse, dairy, and all other offices, and all yards, courts, and curtilages, and gardens, and pleasure-grounds, belonging to and occupied with any dwelling-house, shall, in charging the said duties, be valued together with such dwelling-house; provided no more than one acre of such gardens and pleasure-grounds shall in any case be so valued.”

The following decisions under the above rule appear to be relevant to the interpretation of sub-s. 4 (b):—Ordinary hotel stables separated from the hotel by a yard, and occupied by the hotel-keeper, were held to be “belonging to and occupied with” the hotel, though the hotel and stables were let at separate rents (*Young v. Douglas* (1879), 7 R. 229; 1 Tax C. 227); followed where the hotel and stables were separated by a passage over which there was a public right of way (*Inland Revenue v. Petrie* (1892), 29 Sc. L. R. 342; 3 Tax C. 155); and where the stables and hotel were held under leases from different landlords (*Swaen v. Fleming* (1899), 1 Tax C. 107).

Hunt kennels and stables which adjoined dwelling-houses in which the huntsman and whips lived were held to be taxable together with the dwelling-houses (*Cheape v. Kiamout* (1888) 16 R. 144).

Training-stables containing four rooms in which the stable-lads slept, and situate close to a dwelling-house lived in by the trainer's head lad, were held to be “belonging to and occupied

with "the dwelling-house within the meaning of rule 2 (*Lambton v. Kerr*, [1895] 2 Q. B. 233). On the other hand, where a stud-groom, engaged in a training-stable, held a dwelling-house near by, under an agreement with the owner of the stable and house (who was also the stud-groom's employer), the stud-groom paying rates for the house, the owner was held not to be the occupier of the house under rule 1 of Sched. B. (*Cooper v. Rose*, (1907) 5 Tax C. 288; 97 L. T. 337).

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THE SITE OF
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HOUSE.

The question whether school buildings are "belonging to and occupied with" the dwelling-house or houses occupied by the master or masters depends on whether the latter do or do not occupy their houses as servants of the governors, etc., of the school. If the masters do so occupy their houses, the governors are the occupiers of the whole of the buildings, and are liable to the inhabited house duty in respect of the adjacent buildings as well as of the dwelling-houses (*Bradford Grammar School v. Northwood*, (1905) 5 Tax C. 124). Where, however, the masters are themselves the occupiers of the houses, and the governors of the rest of the buildings, the latter are not taxable (*Clifton College v. Tompson*, [1896] 1 Q. B. 432; *Charterhouse School v. Gayler*, *ibid.* 437). Where the master himself carries on the school as a business, and occupies for this purpose school buildings adjoining his dwelling-house, he is taxable for the whole (*Browne v. Furtado*, [1903] 1 K. B. 723).

A solicitor's office was held to be "belonging to and occupied with" the dwelling-house, where the office could only be reached from the dwelling-house by crossing a yard, which was entered by means of a passage in which the front door of a house stood, the passage being shut off from the street at night (*Nicholls v. Malim*, [1906] 1 K. B. 272).

Under s. 27 of the Reform Act, 1832, the borough franchise is given (among other persons) to a person occupying a house . . . "jointly with any land . . . occupied therewith by him as owner or . . . as tenant under the same landlord"; and a person was held under those words to be entitled to vote who occupied (as tenant under the same landlord) a house and a piece of garden ground, about forty yards distant from the house, and separated from it by waste land and a row of buildings, and only to be reached from the house by public roads (*Collins v. Thomas, Town Clerk of Tewkesbury* (1852), 22 L. J. C. P. 38).

The above cases must of course be read in connection with the particular facts of each; but it is submitted that it may be deduced from them that the words "occupied together with the dwelling-house" in s. 8 of the present Act do not necessitate the dwelling-house on the one hand, and the offices, etc., on the other hand, being held or occupied under the same title, so long as the same person is the "owner," as defined in sub-s. 4 (a) of both dwelling-house and offices, etc. (cf. *Swain v. Fleming*, *supra*, p. 108); that the offices, etc., are not "occupied together with the dwelling-house" unless the same owner as so defined has the paramount control of both (cf. *Bradford Grammar School v. Northwood*, and the cases cited therewith, *supra*, p. 109; see also the cases cited in the note on *Separate Occupation*, *infra*, p. 235); and that the offices,

Sect. 8. etc., may be occupied together with the dwelling-house, although they do not immediately adjoin it, but are separated by land owned or occupied by persons other than the "owner" of the dwelling-house and the offices, etc.; cf. *Inland Revenue v. Petrie, Collins v. Thomas*, *supra*, pp. 108, 109.

THE SITE OF
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HOUSE.

Dwelling-house used as a Residence.—The terms "dwelling-house" and "residence" are not defined in the Act. It is submitted, however, that the term as here used, means a house in which persons habitually reside, and that the house will not lose the benefit of the exemption merely because it is used for carrying on a trade, business, or profession as well as for a residence, as where goods or wares are exposed for sale in a shop forming part of the house, or because the house has a license for the sale of intoxicating liquors (cf. House Tax Act, 1851, Sched.) Otherwise such houses as small shops and public-houses in villages, of which there must be many within the values specified in sub-s. (1), would lose the benefit of the exemption. Nor, it is submitted, would the exemption be lost because a part of the house was sub-let, or because lodgers were taken. But if the whole house were sub-let for a part of the twelve months, it is submitted that the exemption would be lost (cf. *Durant v. Carter*; *Ford v. Pye*, *infra*, p. 111). As to what constitutes a dwelling-house for the purpose of inhabited house duty, see Piper's House Tax Laws, pp. 10 *sqq.*

Questions similar to those which may arise as to the meaning of the words "used by the owner thereof as his residence," in sub-s. (1) have been frequently considered in connection with the franchise. "As soon as it is established that a man has a home at any place where his wife and family or servants are always ready to receive him, the amount of personal residence there during any given period is immaterial; nor is a man limited to one home, if he has the means of supporting more than one" (Rogers on Elections, 17th. ed. p. 154, n. (c)). These remarks might have been extended, as will be seen, to include cases where the home is always ready to receive the man, even though there be no one in it. "The word 'residence' [in the Reform Act, 1832 (2 and 3 Will. 4 c. 45), s. 32] is not a technical term; it is a word adopted from the popular language of the country, and therefore to be interpreted in its ordinary sense" (*Whithorn v. Thomas* (1844), 14 L. J. C. P. 38, *per* MAULE, J., at p. 40). "Residence must mean actual occupation either by himself or by his family or servants" (*ibid.*, *per* TINDAL, C.J.). The general principles stated as follows in Elliot on Registration, 2nd. ed. p. 204, were adopted by ERLE, C.J., in *Powell v. Guest* (1864), 34 L. J. C. P. 69, at p. 70, and have often since been cited and followed:—"That in order to constitute residence, a party must possess, at the least, a sleeping apartment, but that an uninterrupted abiding at such dwelling is not requisite. Absence, no matter how long, if there be the liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence. But if he has debarred himself of the liberty of returning to such dwelling, by letting it for a period, however short, or has abandoned his intention of returning, he cannot any longer be said to have even a legal residence there." It

is submitted that these principles will govern the interpretation of the word "residence" in the present sub-section.

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Coming now to particular cases, it has been held under the Reform Act, 1832, ss. 27, 31, 32, 33, which do not (or did not, s. 33 being now repealed) give the borough franchise under those sections to persons who have not "resided" for six calendar months within certain geographical limits, that a man who paid 9*d.* a week for the use of a furnished bedroom within the limits and of a small closet in which he kept wine samples, and slept in the bedroom only twelve nights in the six months, was not qualified (*Whithorn v. Thomas, supra*); that a man who was, for a part of the six months, imprisoned for assault outside the limits, was not qualified, because his own act had debarred him from residing (*Powell v. Guest, supra*), (certain Irish cases upon break of residence by imprisonment, etc., will be found collected in [1897] W. N. 103 *sqq.*); that an officer in the army serving with his regiment, who usually had three months' leave in the year and spent his leave at his mother's house within the limits, where apartments were reserved for him, was not qualified because he could not move about at his own will and pleasure (*Ford v. Hart* (1873), L. R. 9 C. P. 273; but see now the Electoral Disabilities Removal Act, 1891 (54 & 55 Vict. c. 11). Two clergymen who were absent during part of the qualifying periods from their rectory and vicarage, other clergymen occupying those houses in the meantime and performing the parish duties, were held not to be qualified (*Durant v. Carter*; *Ford v. Pye* (1873), L. R. 9 C. P. 261, 269); and a person articulated to a solicitor in London, though a bedroom was set apart for him in his father's house within the limits, and used by him during a part of the six months, was not qualified because substantially he could not remain at his father's house during the period of his articles without the solicitor's permission (*Ford v. Drew* (1879), 5 C. P. D. 59); the same conclusion was come to on similar facts, except that the employment in London was not continuous (*Beal v. Exeter Town Clerk* (1887), 20 Q. B. D. 300). On the other hand, it was held that a man who slept for two out of the six months in a cottage allotted to his wife's mother by the trustees of a charity (though the rules of the charity forbade his doing so) resided there during that time, and that he had not broken his six months' residence by going to London for one night on his employer's business (*Beal v. Ford* (1877), 3 C. P. D. 73).

The principle of *Ford v. Hart, supra*, has been followed with respect to the "service" franchise created by the Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 3, (*Ford v. Barnes* (1885), 16 Q. B. D. 254; *Larcombe v. Simey*, [1907] 1 K. B. 139).

By the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 4 (3) the "lodger" franchise is given to a person who (*inter alia*) "has resided in such lodgings during the twelve months," and a gentleman's attendant was held qualified in respect of lodgings where his wife and family always resided, and where he himself could sleep when he liked, and did actually sleep at least one night in each week, though he often slept in lodgings taken for him in the same house as the gentleman; he had not bound himself to sleep in the latter place (*Taylor v. St. Mary Abbots*

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(1870). L. R. 6 C. P. 309); and a person who had a house and permanent establishment in the country, but also had lodgings in London where he slept on several occasions during the qualifying period for several nights at a time, but where he kept no servant, was held to be qualified in respect of the lodgings (*Bond v. St. George's, Hanover Square*, *ibid.* 312. See also *Falconer v. Dunlop*, (1890), 18 R. 312; [1897] W.N. 124; *Malcolm v. Browne* (1894), 22 R. 188; [1897] W. N. 124; *Kelly v. Chambers*, *ibid.* 125; *Miller v. Bruce* (1899), 2 F. 265; [1900] W.N. 230).

Under the Municipal Corporations Act, 1835 (5 & 6 Will. 4. c. 76), s. 9, the question was whether there had been such a degree of inhabitation as to be in substance and in common sense a residence, and a newspaper proprietor who kept a bedroom at his office in a municipal borough, and slept there on several occasions for several nights at a time was held to have such a residence (*R. v. Mayor of Eelecter, Wescomb's Case* (1868), L. R. 4 Q. B. 110); the contrary was held in the case of another business man, of whom it was only proved that he "sometimes" slept in the bedroom which he reserved at his business premises (*Dipstale's Case*, *ibid.* 114; cf. *Whithorn v. Thomas*, *supra*).

Principles somewhat similar to those above stated in respect to the franchise have been applied to the question whether a condition as to residence appearing in a will has been satisfied (*Walcot v. Botfield* (1854, Kay 534; *In re Moir* (1884), 25 Ch. D. 605; *In re Wright*, [1907] 1 Ch. 231).

A gentleman who took a cottage in a parish for six months and slept in the cottage, but kept no servants there and seldom took meals there, has been held qualified by residence in the parish to act as churchwarden (*R. v. Townson* (1908), 72 J.P. 368).

The Occasion on which the Duty is to be Collected.—
—This phrase as used in sub-s. (1) will probably be found in practice to apply only on the occasions specified in s. 1 (a) and (b), *supra*, p. 59.

Owner, for the purposes of this section, is defined in sub-s. (4) (a). As to the meaning of the term for which a lease was originally granted, *vide infra*, p. 131. Where the land is held under a lease which was originally granted for a term of fifty years or more, and any occasion arises on which but for this section increment value duty would have been due, the holder of the fee simple or other interest superior to that of the "owner" as here defined will be liable for increment value duty so far as his interest is concerned, supposing that there is any increment value as regards that interest. As to the calculation of increment value see pp. 76, 77, *supra*. "Owner," for the purposes of Part I. generally, is defined in s. 41, *infra*, p. 303.

Annual Value.—The amount of the annual value of a dwelling-house under Schedule A. of the Income Tax Acts affords one of the criteria for exemption under sub-s. (2). As under Schedule A. the annual value of dwelling-houses is not always assessed separately from that of other land, sub-s. (3) empowers the Commissioners to make in such cases any division of the Schedule A.

assessment which may be necessary for the purpose of sub-s. (1) or sub-s. (2).

The annual value of land as adopted for the purpose of income tax under Schedule A, is (outside the metropolis) calculated upon the principles laid down in the rules appended to s. 60 of the Income Tax Act, 1842. No. I. is the "general rule for estimating lands, tenements, hereditaments, or heritages mentioned in Schedule A," and is as follows: "The annual value of lands, tenements, hereditaments, or heritages charged under Schedule (A.) shall be understood to be the rent by the year at which the same are let at rackrent, if the amount of such rent shall have been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment, but if the same are not so let at rackrent, then at the rackrent at which the same are worth to be let by the year; which rule shall be construed to extend to all lands, tenements, and hereditaments, or heritages, capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value, except the properties mentioned in No. II. and No. III. of this Schedule."

This rule and the numerous subsidiary rules are discussed fully in Dowell's Income Tax Laws, 6th edn. pp. 69 *sqq.* Under the Finance Act, 1894, s. 35, in the case of certain lands with houses or buildings upon them, "the amount of the assessment" is "for the purposes of collection," reduced in certain ways, and the relief given by that provision is extended by s. 69 of the present Act. The reductions made under these provisions will, however, be left out of account in ascertaining the annual value for the purposes of the present section; for they are not expressed by s. 35 of the Act of 1894 to be reductions of the "annual value." A revaluation for the purposes of Schedule A is not made in every year; in most years the Finance Act provides (as in s. 65 (3) of the Act of 1910) that (outside the metropolis) the annual value of any property which has been adopted for the purpose of income tax during the previous financial year shall be taken as the annual value of such property for the same purpose in the current year, and such a provision makes the value adopted in the preceding year conclusive for the current year (*Turner v. Carlton*, [1909] 1 K.B. 932). About every five years that special provision is omitted from the Finance Act, and the question of value is left open.

In the metropolis, the valuation list for the time being in force is conclusive evidence of the gross value of the several hereditaments inserted therein for the purpose (*inter alia*) of any income tax under Schedule A which becomes chargeable during the year that the list is in force (Valuation (Metropolis) Act, 1869, s. 45 (2)(b)). The tax under Schedule A is therefore charged in the metropolis on the gross value of the hereditament, less the reductions allowed by s. 35 of the Finance Act, 1894. It has been pointed out, *supra*, that these reductions are not here relevant. Consequently, in the metropolis, the annual value for the purposes of the present section is the gross value appearing in the valuation list for the time being in force. The term "gross value," as defined by s. 4 of the Act of 1869, "means the annual rent which a tenant might reasonably be expected, taking one year with

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another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent."

Under the Act of 1869, a new valuation list is made every five years (1910, 1915, and so on), ss. 6, 46; it comes into force on the following 6th April (s. 43), and is revised during the intervening periods by means of supplemental and provisional lists made under s. 46 and s. 47 respectively. In each of the last four years of such period, a supplemental list comes into force on 6th April, and the valuation list as altered by the supplemental list is deemed to be the valuation list in force during the year commencing on that 6th April, s. 46 (5). A provisional list may be made during the course of the year: it continues in force until the first list (supplemental or other) which is subsequently made comes into force; and, during the time that it is in force, is deemed to form part of the valuation list for the time being in force, s. 47 (8) (10). Upon the whole of this subject see Ryde on Rating, 2nd edit., Chaps. XXXII.-XXXIV.

The Administrative County of London.—The area under the jurisdiction of the London County Council (Local Government Act, 1888, s. 40 (1), (8)). This area is within the "metropolis" as defined by ss. 3, 4 of the Valuation (Metropolis) Act, 1869.

Borough.—As the word is used in conjunction with "urban district," a municipal borough is apparently meant, that is to say, as regards England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882 (Interpretation Act, 1889, s. 15 (1), (4)). This includes county boroughs (Local Government Act, 1888, ss. 31, 54) and cities; but by reason of s. 6 of the Act of 1882, it does not include any part of what is now the administrative county of London.

Urban District.—"Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts" (Local Government Act, 1894, s. 21 (1)). Under the same provision, the style of the corporation or council of a borough is not to be altered; but such a corporation or council is an urban sanitary authority.

Exemption for Agricultural Land.—"Agricultural land" is defined in s. 41, *infra*, p. 304. The exemption created under sub-s. (2) apparently applies to land which, though actually used for agriculture as defined in s. 41, has some higher value than its value for agricultural purposes only, for otherwise there would be no necessity for the presence of this special exemption as well as of the general exemption created by s. 7, *supra*, p. 104. The existence of sporting rights over the land would not appear to defeat the exemption under sub-s. (2). As to the period of twelve months during which the occupation and cultivation by the owner must have continued, cf. the note on "dwelling-house used as a residence," *supra*, p. 110. It is submitted that the exemption will not apply to any piece of land which is let by the "owner" during part of the twelve months. If any part of an owner's land is let by him, care should be taken

to secure an assessment to duty for that land, apart from the land which is not so let, under s. 29, *infra*. As to the meaning of "owner" and "annual value," see notes on those expressions, *supra*. "Total value" is ascertained upon the principles laid down in s. 25 (3), *infra*, p. 200; it would appear that total value may have to be specially ascertained for the present purpose, as at the time to which the exemption if granted would apply. But it may be that the time in question is so near to the 30th April, 1909, that the total value as shown or adopted in the valuation under ss. 26 and 27, *infra*, pp. 229, 240, may be used as a criterion for the present purpose. The "average total value of the land" appears to refer to the whole of the land belonging to the same owner; though this is not quite clear.

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EXEMPTION
FOR AGRICUL-
TURAL LAND.

Example.—A is the owner of 44 acres of agricultural land, as well as of a mill and dwelling-house, which together cover one acre. The annual value of the dwelling-house (which is occupied together with the agricultural land) is £25. The total value of the whole 45 acres is £2700, and the average total value is £60 per acre. A has occupied and cultivated the 44 acres of agricultural land for twelve months previously to the "occasion" in question. A is exempt on that occasion from the payment of increment value duty in respect of the 44 acres.

In the proviso to sub-s. 2 it appears to be the annual value of the dwelling-house which must not exceed £30; not the annual value of the land and dwelling-house together: see note on "Annual Value," *supra*. As to the phrase "occupied together with a dwelling-house," see note on "The site of a dwelling-house," *supra*.

Duty Deemed to have been Paid.—Sub-s. (4) is inserted for the purpose of meeting the words at the end of s. 1, "So far as it has not been paid on any previous occasion": see note thereon, *supra*, p. 74.

Appeals.—An appeal appears to lie under s. 33 (1) *infra*, p. 266, against a refusal to allow an exemption under sub-s. 1 or sub-s. 2, and against a determination of the Commissioners on any other matter that they may have to determine under this section.

9. Increment value duty shall not be collected on any periodical occasion in respect of the fee simple of or any interest in any land which is held by any body corporate or unincorporate, without any view to the payment of any dividend or profit out of the revenue thereof, *bonâ fide* for the purpose of games or other recreation, if the Commissioners are satisfied that the land is so used under some agreement with the owner which as originally made could not be determined for a period of at least five years, or under other circumstances which render it probable that the land will

Special provision for increment value duty in the case of land used for games and recreation.

Sect. 9. continue to be so used, without prejudice, however, to
— the collection of the duty on any other occasion.

Increment Value Duty.—The duty payable on the occasion specified in s. 1 (c), *supra*, p. 59, is excused by the present section, but not the duty which may become payable in respect of such land as is here described by such a body as is here described on any of the occasions specified in s. 1 (a), *supra*, pp. 59, 71. Compare with the present provision, the provision for the exemption from undeveloped land duty of certain land used for purposes of games and recreation, in s. 17 (3) (d), *infra*, p. 156. Note that no one except a body corporate or unincorporate is excused by this section from the payment of duty. If therefore a lease for a term of years exceeding fourteen years is granted by an individual, though it is granted to a body corporate or unincorporate for the purposes specified in this section, increment value duty will be payable under s. 1 (a). The duty will also be payable on transfer on sale of the land or any interest therein, whether by an individual or by a body, under s. 1 (a); and there is no relief from duty on the occasions specified in s. 1 (b). On the occasions when duty is leviable, no allowance will be made in respect of the duty which would, but for the present section, have been paid under s. 1 (c); cf. note to s. 37, *infra*, p. 281.

“Land”—“Interest in Land”—“Fee Simple.”—See definitions in s. 11, *infra*, p. 301.

Body Corporate or Unincorporate.—See note to s. 1 (c) *supra*, p. 72. “The revenue thereof” refers apparently to the revenue arising out of the land or interest in question, and not to the general revenue of the body. With the phrase “without any view to the payment of any dividend or profit” may be compared the qualification for a somewhat similar purpose contained in the Scientific Societies Act, 1843, 6 & 7 Vict. c. 36, s. 1, by which a society can only derive the exemption thereby created if (among other conditions) it does not, “and by its laws may not, make any dividend, gift, division, or bonus in money” to its members. That exemption is not destroyed by the possibility of a member making a profit by selling his share (*Bradford Library Society v. Bradford Churchwardens* (1858), 28 L.J. M.C. 73; *Liverpool Library v. Mayor of Liverpool* (1860), 29 L.J. M.C. 221). The fact that some of the members receive payments for services rendered to the society, as professors employed by the society, and not as members, does not deprive the society of the benefit of the exemption (*Royal College of Music v. Westminster Vestry*, [1898] 1 Q.B. 809; cf. *Cyclists' Touring Club v. Hopkinson*, [1910] 1 Ch. 179). It is submitted that the principle of the above cases applies to the present position.

It is submitted that the present exemption does not fail merely because the members derive some benefit other than pecuniary (such as the use of a pavilion) from the operations of the body.

A body such as is described in this section, which holds no other land or interest in land than is here described, is not bound to render the account required by s. 6 (2), *supra*, p. 101, on any periodical occasion, see s. 6 (5).

Bonâ fide.—See note to s. 10 (1).

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Agreement with the Owner.—Cf. note on s. 17 (3), *infra*, p. 159. "Owner" is defined in s. 41. "Determined," see p. 123, *infra*. "Period of at least five years," cf. note on "Term of Years," *supra*, p. 69.

Appeal.—In spite of the words "if the Commissioners are satisfied," it is submitted that an appeal lies from a determination of the Commissioners under this section, under the concluding words of s. 33 (1), *infra*, p. 267.

10.—(1) Any increment value duty in respect of the fee simple of or any interest in any land held by or in trust for His Majesty or any department of Government, which would have been collected on any occasion had it been held by a private person, shall for the purposes of the provisions of this Act as to the collection of increment value duty be deemed to have been paid.

Provision as to Crown lands, etc.

(2) Neither section seventy-seven of the Crown Lands Act, 1829, nor section thirty-eight of the Post Office Act, 1908, nor any other enactment exempting from stamp duty any document made or executed on behalf of or for the purpose of the Crown or any Government department, shall apply so as to prevent increment value duty being collected on any instrument by which the transfer on sale of the fee simple of or any interest in any land, or the grant of any lease of any land, to the Crown or to any Government department, or to any officer on behalf of or for the purposes of the Crown or any Government department, is effected or agreed to be effected.

Fee Simple—Land—Interest In Land.—See definitions in s. 41, *infra*, p. 301.

Held by or in Trust for His Majesty or any Department of Government.—Cf. notes to s. 26, *infra*, p. 229, and to s. 1, *supra*, p. 61. The view is there submitted that land (or an interest in land) held for the purposes of the general government of the country, is outside the purview of the duties imposed by Part I., even though it cannot be said that that land or interest is held by or in trust for His Majesty or any department of Government, in the ordinary sense. The words "department of Government" appear to be used here in their ordinary sense, so that such land as the site of an assize court or a county police station would not be included in the

Sect. 10. words. If this view is correct, then increment value duty which
 — would have been collected in respect of any such land as is lastly
 HELD BY OR described is not under the provisions of the present section to
 IN TRUST FOR be deemed to have been paid. But if such land or interest is held
 HIS MAJESTY by a rating authority within the meaning of s. 35, *infra*, p. 277,
 OR ANY the increment value duty which would have been collected from
 DEPARTMENT the authority will be deemed to have been paid.
 OF GOVERN-
 MENT.

Held by a Private Person.—It is submitted that the provisions of sub-s. (1) apply not only to any duty which might have been collected on the occasions specified in s. 1 (a), but also to the duty which would have been collected on the periodical occasions specified in s. 1 (c), if the holder had been a private body corporate or unincorporate, instead of being His Majesty or any department of Government. "Person" shall, unless the contrary intention appears, include any body of persons, corporate or unincorporate (Interpretation Act, 1889, s. 19). It is submitted that no contrary intention appears here or in s. 1, *supra*, p. 59. For cases in which the contrary intention has been held to appear in the Income Tax Act, 1842, which has an interpretation clause somewhat similar to that just cited, see *Mylam v. Market Harborough Advertiser Co.*, [1905] 1 K. B. 708; *Curtis v. Old Monkland, etc., Association*, [1906] A. C. 86.

Shall be Deemed to have been Paid.—As to the effect of this enactment, see the concluding words of s. 1, and s. 3 (1), and notes thereon, *supra*, pp. 73, 85.

Stamp Duty.—The increment value duty to be collected on the occasions described in sub-s. (2) is levied under s. 1 (a), *supra*, p. 59. Under s. 3 (6), *supra*, p. 85, it is to be a stamp duty. And provisions for its collection from the transferor or lessor, and for the method of collection, are contained in s. 4, *supra*, p. 88.

Section 77 of the Crown Lands Act, 1829, 10 Geo. 4. c. 50, so far as material, is as follows:—

"And be it further enacted, That no Memorandum, Contract, or Agreement to be made or entered into by or with the Commissioners for the Time being of His Majesty's Woods, Forests, and Land Revenues, under the Powers and Provisions of this Act, for the Sale, Purchase, or Exchange of any Estates, Manors, Lordships, Messuages, Lands, Tenements, Rents, or Hereditaments, or any Term or Interest therein, by the said Commissioners of His Majesty's Woods, Forests, and Land Revenues; nor any Deed, Receipt, or other Instrument which shall be given, granted, entered into, executed, or made for the purpose of carrying into effect any Sale, Purchase, or Exchange to be made by the said Commissioners of His Majesty's Woods, Forests, and Land Revenues, under the Powers and Authorities of this Act, or which shall be incidental to or connected with any such Purchase, Sale, or Exchange; . . . nor any Lease, or Contract or Agreement for any Lease or Leases, nor any Counterpart of any Lease, to be entered into, made, executed or granted under the Powers and Authorities of this Act; . . . shall be subject or liable to any *ad valorem* or other Stamp Duty whatsoever imposed by any Act or Acts now in

force, nor to any *ad valorem* or other Stamp Duty to be imposed by any future Act or Acts, unless the same be specially subjected thereto in and by such future Act or Acts."

Section 38 of the Post Office Act, 1908, 8 Edw. 7, c. 48, so far as material, is as follows:—

"Every deed, instrument, . . . or other document made or executed for the purpose of the Post Office by, to, or with, His Majesty or any officer of the Post Office, shall be exempt from any stamp duty imposed by any Act, past or future, except where that duty is declared by the document, or by some memorandum endorsed thereon, to be payable by some person other than the Postmaster-General, and except so far as any future Act specifically charges the duty."

Sect. 10.

STAMP
DUTY.

11. Where a building is used for the purpose of separate tenements, flats, or dwellings, the grant of a lease of any such separate tenement, flat, or dwelling, and the transfer on sale or passing on death of any lease of any such separate tenement, flat, or dwelling, shall not be an occasion on which increment value duty is to be collected under this Act, nor shall duty be collected on any periodical occasion from a body corporate or unincorporate where the interest held by the body is only a leasehold interest in any such separate tenement, flat, or dwelling.

Special
provision as
to flats.

Building used for the Purpose of Separate Tenements, Flats, or Dwellings.—These words are probably as wide as any that could have been employed. There have been numerous decisions with reference to inhabited house duty on the meaning of the words "house" and "tenement," but it is submitted that these decisions do not in general form a guide to the interpretation of the present section, because the language employed in the enactments relating to that duty is usually much narrower than that employed here (cf. House Tax Act, 1808 (48 Geo. 3, c. 55), Sched. B, rules 6 and 14, and Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13. Under the Act of 1808 it was held, for instance, that a block of buildings structurally divided into separate tenements or suites of apartments (some of which were used as residences, and some as offices, and some were unlet) was to be assessed as a whole, because it was not a dwelling-house "divided into different tenements being distinct properties" (rule 14; *A.-G. v. Mutual Tontine, etc., Assocn.* (1876), 1 Ex. D. 469). The same blocks of buildings have, however, been held for the purposes of the poor rate to be rateable to the occupiers of the different flats or tenements (*R. v. St. George's Union* (1871), L. R. 7 Q. B. 90, *infra*, p. 235). It is submitted that the principles of the latter case, and of the other cases upon the poor rate cited in the note on "separate occupation," *infra*, p. 232, apply to the interpretation

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 BUILDING
 USED FOR THE
 PURPOSE OF
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 TENEMENTS,
 FLATS, OR
 DWELLINGS.

of the present section; and that a building used for the purpose of tenements, flats, or dwellings "separately occupied" within those cases will be within the present section. The tenements or flats may, it would appear, be used for business or for residential purposes, or for both.

The present section does not appear to render it necessary that the building in question should be structurally divided in order to be within the benefit of the exemption (cf. *Allchurch v. Hendon Union*, *infra*, p. 235). The necessity of a structural division is, however, implied by sub-s. (1) of s. 13 of the Customs and Inland Revenue Act, 1878, and probably by sub-s. (2) also (*Grant v. Longston*, [1900] A. C. 383, *per* LORD DAVEY at p. 397). The cases therefore in which s. 13 has been held not to apply, do not appear to be relevant for the present purpose; but it is submitted that where that section does apply, the present provision will apply also. The leading case in which s. 13 has been held to apply is that last cited, where the building in question consisted of a wineshop on the ground floor and an upper storey used as a residence, the shop and residence having separate entrances from the street and no internal communication. The wineshop was held to be a "house or tenement occupied solely for the purposes of any trade or business" within s. 13 (2); and to be therefore excluded from the assessment of the building to inhabited house duty. Other cases where the provisions of s. 13 have been held to apply to various houses or buildings are *Corke v. Brims* (1883), 20 Sc. L. R. 778; 1 Tax C. 531; *Nisbet v. McInnes* (1884), 21 Sc. L. R. 740; 2 Tax C. 55; *Allan v. Thomson* (1884), 21 Sc. L. R. 741; 2 Tax C. 52; *Allan v. Gilchrist* (1884), 2 Tax C. 52; *Smiles v. Crooke* (1886), 23 Sc. L. R. 489; 2 Tax C. 162.

The Revenue Act, 1903 (3 Edw. 7, c. 46), s. 11, contains provisions regarding the assessment to inhabited house duty of a house which "so far as it is used as a dwelling-house, is used for the sole purpose of providing separate dwellings"; and these words are analogous in several respects to those placed at the head of this note. In the case of a house provided by a county council under the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), Part III., where separate sleeping accommodation in cubicles was provided for the lodgers, but the lodgers used the reading and dining rooms, lavatories, etc., in common, and each cubicle might be hired for one night, but must be vacated before a fixed hour in the morning, it was held that the cubicles were not "separate dwellings" within the meaning of that section (*London County Council v. Cook*, [1906] 1 K. B. 278); but see now the Housing, Town Planning, etc., Act, 1909, s. 35.

Lease.—Defined in s. 41, *infra*, p. 302.

The Occasion mentioned.—The "grant of a lease" and the "transfer on sale of a lease" would but for this section be an occasion on which duty is to be collected under s. 1 (*a*), and the "passing on death," an occasion under s. 1 (*b*), while the periodical occasions referred to are those provided by s. 1 (*c*), *supra*, p. 59.

In respect of the cases (very rare in England) where a separate

tenement or flat in a building is held in fee simple, no exemption is created by this section.

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There is no provision in the present section (as in s. 35, *infra*, p. 277) to the effect that the duty excused under it shall be deemed to have been paid on any subsequent occasion on which increment value duty is due. Increment value duty becomes due on the occasions when the fee simple of such a building as is here described is transferred on sale (s. 1 (a)), or passes on death (s. 1 (b)), or on the periodical occasions when a body corporate or unincorporate holds the fee simple (s. 1 (c)). On such occasions, there will be no reduction of the amount of duty payable in respect of any duty which, but for the present section, would have been previously paid. Cf. note to s. 37, *infra*, p. 281.

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MENTIONED.

Appeal.—An appeal under s. 33 (1), *infra*, p. 266, would appear to lie against a refusal of the Commissioners to allow the exemption created by this section.

12. A person shall not be entitled to claim any deduction for the purpose of ascertaining the site value of any land on any occasion on which increment value duty becomes payable if the deduction is one which could have been, but was not, claimed for the purpose of ascertaining the original site value of the land.

Provision
as to claims
for de-
ductions.

Deductions.—Deductions for the purpose of ascertaining the site value of land on any occasion on which increment value duty becomes payable are admissible under s. 2 (2) (see note on "deductions," *supra*, p. 81); and are of the same nature as those admissible under s. 25 (4), *infra*, p. 200, for the purpose of ascertaining the original site value of the land. These deductions must therefore be claimed at the valuation made under s. 26, *infra*, p. 229, either in the estimate which may be furnished under s. 26 (3), or upon objection made under s. 27, *infra*, p. 240, to the provisional valuation, if they are to be claimed at all. The deductions admissible in ascertaining original site value cannot be claimed upon an appeal against any assessment of duty (s. 33 (1), *Proviso (b)*, *infra*, p. 267).

If a deduction of a certain amount in respect of any of the matters specified has been claimed for the purpose of ascertaining the original site value, and if on any occasion on which increment value duty becomes payable a deduction of a larger amount can be properly claimed in respect of the same matter, it is apparently not intended that such a claim should be shut out by the operation of this section (Commons Debates, Official Report, 1909, Vol. 11, col. 1446).

Apparently under this section a person may be prevented from claiming deductions by the fact that some other person (who may not even have been his predecessor in title) has failed to claim them at the proper time.

Sect. 12. As to the occasions on which increment value duty becomes payable, see s. 1 (a), (b), (c), *supra*, p. 59.

DEDUCTIONS. The present section appears to apply equally to occasions on which increment value duty becomes payable in respect of an interest in the land, as to occasions on which the duty is leviable in respect of the fee simple.

A record of deductions allowed in determining any value is to be kept by the Commissioners under s. 30, *infra*, p. 255.

Minerals.—The present section appears to apply to the capital value of minerals (see s. 23 (3), *infra*, p. 188). Deductions are allowed in ascertaining the capital value of minerals, under s. 23 (1). As to the increment value duty in respect of minerals, see s. 22, *infra*, p. 179, and notes thereto.

Reversion Duty.

Reversion
duty.

13.—(1) On the determination of any lease of land there shall be charged, levied, and paid, subject to the provisions of this Part of this Act, on the value of the benefit accruing to the lessor by reason of the determination of the lease a duty, called reversion duty, at the rate of one pound for every complete ten pounds of that value.

(2) For the purposes of this section the value of the benefit accruing to the lessor shall be deemed to be the amount (if any) by which the total value (as defined for the purpose of the general provisions of this part of this Act relating to valuation) of the land at the time the lease determines, subject to the deduction of any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease and of all compensation payable by such lessor at the determination of the lease, exceeds the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property), but where the lessor is himself entitled only to a leasehold interest the value of the benefit as so ascertained shall be reduced in

proportion to the amount by which the value of his interest is less than the value of the fee simple. Sect. 13.

Determination of Any Lease.—"Lease" is defined in s. 41, *infra*, p. 302. No reversion duty is charged at the determination of a "mining lease" as defined in s. 24, *infra*, p. 194. See s. 22 (1), *infra*, p. 179.

"Determination may properly, and according to legal use, as well as according to its derivation, signify the coming to an end in any way whatever," *per* KINDERSLEY, V.C., in *St. Aubyn v. St. Aubyn* (1861), 30 L. J. Ch. p. 920. There appears to be nothing in the Act which should prevent the word "determination" in s. 13 from being read in its widest meaning, except the definition of "the term of a lease" in s. 41, by which it is provided that where a lease contains an obligation to renew the lease, a "lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined."

Besides the coming to an end by the expiry of the term of years specified in the lease, the word appears to include the coming to an end by the non-fulfilment of a condition. It is clear from s. 14 (3), *infra*, p. 128, that the word "determination" includes surrender. And there appears to be nothing to prevent its applying to merger; in other words, where the leasehold interest and the reversion become vested in the same person, there will be a "determination of the lease," upon which that person will be assessable to duty as if he were only the lessor, and the fact that the leasehold interest becomes vested in himself will not prevent him from being so assessable. Subject to what has been quoted above from the definition of the "term of a lease," forfeiture by re-entry or ejectment, the expiry of a notice to determine given pursuant to the conditions of the lease, and a coming to an end by any other means by which leases within the definition of "lease" in s. 41 (not being within the benefit of any of the total exemptions created by s. 14, *infra*, p. 129) come to an end, would all appear to be within the words "the determination of any lease" in the present section. "The determination of the tenancy" is fully treated in Fawcett on Landlord and Tenant, 3rd Edn., Chap. VI.; Woodfall, 18th Edn., Chap. VIII. If, in an action to recover possession upon breach of a covenant, in a lease, an order for relief from forfeiture is made under the Conveyancing Act, 1881, s. 14 (2), there is no determination of the lease (*Dendy v. Evans*, [1910] 1 K. B. 263).

By the definition in s. 41 "lease" includes (*inter alia*) an under-lease; and where an under-lease comes to an end by reason of the forfeiture of the superior lease, there would appear to be a "determination" of the under-lease within the meaning of the present section. This point may not however be of much practical importance, as reversion duty would in most cases be payable on the determination of the superior lease. Where a reversionary lease exists, even though the reversionary lease is between the same parties as the original lease and begins immediately upon the coming to an end of the original lease, it is submitted that this

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DETERMINA-
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Where promoters, acting under the Lands Clauses Acts, acquire the lessee's interest in the whole of the lands demised by the lease, and also acquire the lessor's interest in these lands, there would appear to be a determination of the lease within the meaning of s. 13, though it may be that, by reason of the provisions of s. 14 (4), *infra*, pp. 128, 133, a payment of increment value duty upon the occasion of such a "transfer on sale" (*vide supra*, p. 62) would render any payment of reversion duty unnecessary. But where only a part of the lands comprised in a lease for a term of years is taken by the promoters, there would not appear to be a determination of the lease, for the covenants of the lease are preserved, and the lessee is liable to an apportioned rent, under Lands Clauses Act, 1845, s. 119.

As to copyholds and customary freeholds, *vide infra*, p. 298.

In the case of a lease for lives, note that the determination takes place when the last life for which the lease is granted expires, and not at the end of the "term" as calculated according to the definition in s. 41, *infra*, p. 302.

Lease of Land.—See definition in s. 41, *infra*, p. 302, and notes thereon; and note to s. 1, *supra*, p. 69.

Lessor—Lessee.—Defined in s. 41, *infra*, p. 303.

Exemptions.—As to the exemption in favour of rating authorities, see s. 35, *infra*, p. 277; in favour of a "governing body" or "registered society," etc., see s. 37, *infra*, p. 280; and in favour of statutory companies, see s. 38, *infra*, p. 287. Exemptions from the reversion duty alone are created by s. 14, *infra*, p. 127.

Incidence, Assessment, and Collection.—See s. 15, *infra*, p. 135.

Value of the Benefit.—This is the amount upon which reversion duty is to be assessed, and is calculated by a complicated process. First, the total value at the time the lease determines is ascertained upon the principles laid down in s. 25 (3). See notes thereon, *infra*, p. 220. From this sum there are to be deducted first, any part of the total value which is attributable to works executed or expenditure of a capital nature incurred by the lessor during the term of the lease, and secondly all compensation payable by the lessor on the determination of the lease; as to these deductions, see separate notes, *infra*. From the sum left after these deductions are made is to be subtracted a sum representing the total value of the land at the time of the original grant of the lease, which is "to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property)." Words practically the same as those here in parenthesis appear in s. 32 (2), where their effect is discussed, *infra*, p. 265. The principles

generally laid down in s. 32 as to the determination of the value of the consideration for a lease appear to apply to the determination under the present section of "the total value of the land at the time of the original grant of the lease." The use of the phrase "total value" in this connection also suggests a reference to s. 25 (3), *infra*, p. 200; but it is difficult to see how that provision can be applied here in view of the wording of s. 13 (2). What is probably intended by the use of the phrase "total value" in this connection is that the value of all buildings and other matters comprised in the premises at the time of the original grant of the lease is to be included. No principle, however, is laid down by which the total value of the land is to be calculated "on the basis" of the rent reserved, etc.; see the remarks made on a similar expression in s. 2 (2) (b) and (c), *supra*, p. 80. When it is remembered that the lease with reference to which the total value of the land is to be calculated may have created a leasehold interest for as short a period as, say, 22 years, it is clear that there may be many difficulties in ascertaining the total value of the land from the consideration (or a part of the consideration) given for so small an interest in land. Further, the total value has to be ascertained as at the time when the lease was granted; this time is *ex hypothesi* a number of years earlier (it may be ninety-nine years earlier) than the time when the total value is being ascertained. There may therefore be nothing which can serve as a guide in ascertaining the total value at the time of the original grant, besides the rent reserved and payments made, etc.; and there may be no factor which can assist in determining what relation the total value at the time of the grant bore to the rent and payments, etc., then agreed upon. There may, too, in some cases, be a difficulty in obtaining evidence as to the payments and other considerations for the grant of the lease. See also the note on the definition of "lease," *infra*, p. 307.

A further calculation has to be made, as provided at the end of sub-s. (2), where the lessor, as defined in s. 41, *infra*, p. 303, is himself entitled only to a leasehold interest. The language employed is not quite clear; but in its practical application "the value of the fee simple" will probably be found to mean much the same thing as "the total value of the land at the time the lease determines." "Fee simple," "interest in relation to land," are defined in s. 41, *infra*, p. 302.

As to copyholds and customary freeholds, *vide* s. 40, *infra*, p. 298.

A deduction is to be made from the value of the benefit accruing to the lessor for the purposes of reversion duty, equal to the amount of any capital sum or instalment of a capital sum paid to a rating authority for "betterment," under certain conditions, s. 36, *infra*, p. 279.

Examples.—(a) A ninety-nine years' lease of land with a dwelling-house upon it was granted by the freeholder in 1811, for a premium of £500 and a rent of £100 a year. The lease expires in 1910. In that year the total value of the land (as defined in s. 25 (3)) is £6000. Of that value, £500 is attributable to the addition of a billiard-room and conservatory built by the lessor in 1890. The total value in

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1910, after this deduction has been made, is £5500. The total value in 1811 (at the time of the grant of the lease) is ascertained, on the basis of the payments above mentioned, to have been £3000. The value of the benefit is £5500 less £3000, or £2500.

- (b) A grants to B in 1840 a ninety-nine years' lease of land with a dwelling-house upon it for a rent of £200 a year; B in 1850 grants to C a sixty years' lease for a premium of £500 and a rent of £250 a year. The lease to C expires in 1910. The total value of the land (as defined in s. 25 (3) in 1910 is £7500. There are no deductions to be made therefrom. The total value in 1850 (at the time of the grant of the lease to C) is ascertained, on the basis of premium and rent reserved therein, to have been £5500. The value of the benefit in 1910, if B were the freeholder, would therefore be £7500 less £5500, or £2000. The lease to B has, however, only twenty-nine years to run. The value of B's leasehold interest for twenty-nine years unexpired is (say) £1500. The value of the fee simple is £7500. Now £1500 is to £7500 as 1 is to 5. The value of the benefit is apparently to be reduced in that proportion, and is therefore $\frac{1}{5}$ th of £2000, or £400.

Works executed—Expenditure of a Capital Nature incurred.—These phrases occur also in s. 25 (4) (b), and their effect is discussed in the notes thereto, p. 224, *infra*. Note that the works must have been executed, or the expenditure incurred, during "the term of the lease," which expression is defined in s. 41, *infra*, p. 302. "Lessor" is also there defined; and the definition of "lessor" must obviously here be read with reference to the time at which the works were executed, or the expenditure incurred; for it cannot be intended to confine the deduction to works executed, or expenditure incurred, by the person who is, at the time of the determination, entitled to the reversion. The expression "by" the lessor presumably includes "on behalf of" or "at the expense" of the lessor; although it may be thought that the wider phraseology of s. 25 (4) (b) indicates that the word "by" is used here in its strictly literal sense.

It was suggested in Debate by the Attorney-General, that in a case where the lessor gives his sanction to the making of improvements in the property leased during the term of the lease, but the lessee actually bears the expenses of the improvements in the first instance, while the lessor foregoes a portion of his rent, the expenditure is really incurred by the lessor within the meaning of the words now considered (Commons Debates, Official Report, 1909, Vol. 12, col. 388).

All Compensation payable by the Lessor.—Compensation payable under the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), or under s. 47 of the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), would appear at first sight to be included in this phrase. But in view of the exemption from the reversion duty given by s. 14 (2), *infra*, p. 128, upon the determination of the lease of any land used at the time of the determination as agricultural

land, these statutes can have little, if any, application here. For the same reason, it is doubtful whether the Allotments and Cottage Gardens Act, 1887 (50 & 51 Vict. c. 26), or the Tenants Compensation Act, 1890 (53 & 54 Vict. c. 57), has any application.

Apparently any compensation payable by the lessor under the covenants of a lease upon the determination of which reversion duty is due would be within the phrase now considered.

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ALL COMPEN-
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Minerals.—No reversion duty is chargeable on the determination of a mining lease (s. 22 (1), *infra*, p. 179). "Mining lease" is defined in s. 24, *infra*, p. 194. But where land comprising minerals is the subject of a lease other than a mining lease, the value of the minerals comprised in the land (if there is any value attached to them) must apparently be taken into account in ascertaining the "value of the benefit." In such a case the total value of the land at the time of the original grant of the lease and the total value of the land at the time that the lease determines would each appear to include the total value (if any) of the minerals, ascertained as provided in s. 23, *infra*, p. 188. It should be noted, however, that there is no provision (comparable to that in s. 23 (4) regarding site value) for construing a reference to the total value of land as referring to the "total value of minerals"; and if the phrase cannot be so construed without such a special provision, the "total value of minerals" must be left out of account in ascertaining the value of the benefit. But it is submitted that the view first suggested is correct, because there is nothing in the Act to show that the word "land" does not include "minerals."

Ascertainment of the Value of the Benefit: Appeal.—The machinery for ascertaining the value of the benefit is provided by s. 15 (2) and (4), *infra*, p. 135.

An appeal appears to lie against a determination by the Commissioners of the total value of any land for the purpose of ascertaining the value of the benefit (including the amount of the deductions to be made), under the opening words of s. 33, *infra*, p. 266; and against their decision upon the apportionment of the "value of the benefit" between the value of a leasehold interest and the "value of the fee simple," under the words "any apportionment of the value of land" in the same section.

14.—(1) Where, in the case of a reversion to a lease purchased before the thirtieth day of April nineteen hundred and nine, the lease on which the reversion is expectant determines within forty years of the date of the purchase, no reversion duty shall be charged under this part of this Act on the determination of the lease. Provided that this exemption shall not apply where the lease is determined within forty years by agreement between the lessor and the lessee, whether express or implied, not contained in the lease itself, unless the

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(2) No reversion duty shall be charged on the determination of the lease of any land which is at the time of the determination agricultural land, nor on the determination of a lease, the original term of which did not exceed twenty-one years, nor shall reversion duty be charged where the interest of the lessor expectant on the determination of a lease is a leasehold interest which does not exceed that number of years.

(3) Where a lease of any land is determined before the expiration of the term of the lease by agreement between the lessor and the lessee, whether express or implied, and a fresh lease of the land is then granted to the lessee the term of which extends at least twenty-one years beyond the date on which the original lease would have expired, the Commissioners shall make an allowance in respect of the reversion duty payable of two and a half per cent. of the duty for every year of the original term of the lease which is unexpired when the lease is determined, and any sum so allowed shall be treated as having been paid.

Provided that the allowance shall not exceed fifty per cent. of the whole duty payable.

(4) Where on any occasion on which increment value duty is due in respect of any increment value it is proved to the satisfaction of the Commissioners that reversion duty has been paid in respect of any benefit accruing to a lessor, or part of such a benefit, which is identical with the increment value, such sums as the Commissioners determine to have been paid in respect of the benefit or part of the benefit shall be treated as being also a payment on account of increment value duty; and where on any occasion on which reversion duty is due in respect of any benefit accruing to a lessor, it is shown to the satisfaction of the Commissioners that increment value duty has been paid on any increment value which is identical with

that benefit or any part of that benefit, such sums as the Commissioners determine to have been paid in respect of that value shall be treated as being also a payment on account of the reversion duty in respect of that benefit or part of a benefit.

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(5) Where a reversion has been mortgaged before the thirtieth day of April nineteen hundred and nine, and the mortgagee has foreclosed before the lease on which the reversion is expectant determines, the mortgagee shall not be liable to pay reversion duty in excess of the amount by which the total value of the land at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure.

Lessor : Lessee.—See definition of these terms in s. 41, *infra*, p. 303.

Exemptions from Reversion Duty.—The Crown, not being expressly named, is not liable to this duty in respect of lands owned by it, see note, *infra*, p. 230. Nor would it appear that lands owned and maintained by quasi-servants of the Crown for the purposes of the administration render such owners liable for the duty, cf. *Coomber v. Berks. JJ.* (1883), 9 A. C. 61, *infra*, p. 230. But cases where such lands are let are not often likely to arise, unless where a reversion of land has been purchased with the intention of using the land for such purposes as soon as the lease determines. Many such cases will be covered by the exemption given to rating authorities in s. 35, *infra*, p. 277.

In addition to the general exemptions from reversion duty, among other duties imposed under Part I. of the Act, which are given by ss. 35, 37, 38, *infra*, pp. 277 *sqq.*, certain exemptions from reversion duty are given by s. 14. By this section total exemption is given (briefly) in the following cases:—

(a) In the case of reversions purchased under certain conditions (sub-s. (1));

(b) In the case of agricultural land (sub-s. (2));

(c) Where the original term of the lease did not exceed twenty-one years (sub-s. (2));

(d) Where the interest of the lessor expectant on the determination is itself a leasehold interest which does not exceed twenty-one years (sub-s. (2));

A partial exemption is given, under certain conditions:—

(e) Upon surrender and grant of a new lease (sub-s. (3));

(f) Where increment value duty has already been paid upon the same benefit (sub-s. (4));

(g) Upon the foreclosure of a mortgage (sub-s. (5)).

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EXEMPTIONS FROM REVERSION DUTY. A punishment for making a false representation for the purpose of obtaining any allowance, etc., in respect of a duty under this Act is imposed by s. 94, *infra*, p. 322.

An appeal lies, under s. 33, *infra*, p. 266, against a refusal by the Commissioners of any of these exemptions, and against the grant of an insufficient allowance under sub-s. (3) or sub-s. (5). No reversion duty shall be charged on the determination of a mining lease, s. 22 (1), *infra*, p. 179; see also note to s. 13, *supra*, p. 127.

(a) **Purchase of Reversion.**—The effect of the use of the expression “within forty years,” in sub-s. (1), appears to be that the first day of the forty years is reckoned exclusively, and the last inclusively, cf. *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161. The exemption created by s. 14 (1) extends then, it is submitted, to the case of a reversion purchased, say, on April 29th, 1909, if the lease determines on or before April 29th, 1949. As to the precise moment at which a lease for a term of years expires, see note “when term commences and ends,” *infra*, p. 69.

The words “within forty years” in the proviso apparently refer to the date of the purchase, though this is not expressly stated. It is submitted that the word “purchased,” in sub-s. (1), includes all those transactions which it is suggested in the note on “transfer on sale,” *supra*, p. 62, are included in that expression in s. 1; and that (among other transactions) the foreclosure of a mortgage is a purchase within the meaning of s. 14 (1), see p. 66, *supra*. If this view is correct, then if the foreclosure has taken place before April 30th, 1909, and the lease determines within forty years of the date of the foreclosure, the mortgagee escapes reversion duty altogether, and is not thrown back upon the partial exemption created by s. 14 (5), *infra*, p. 134.

In a case where the negotiations for the purchase of a reversion have taken some time to carry through, or where an agreement for purchase has been entered into before the actual purchase, it is submitted that the date which governs the question whether the exemption enures or not is the date of the completion of the purchase.

(b) **Agricultural Land.**—No duty is chargeable on the determination of the lease of any land which is at the time of the determination agricultural land, sub-s. (2). It is immaterial that the land may be intended to be used for some other purpose (such as building) immediately after the lease is determined; even if it is actually used for some other purpose on the day after the determination, the exemption still applies. It is also immaterial that the land has been used for some other purpose at some time during the currency of the lease, if it is agricultural land (*bonâ fide*) at the time of the determination; but this will not be a common case. “Agricultural land” is land used for “agriculture” as defined in s. 41, *infra*, p. 304. It would appear in the present context, at any rate, to include land with buildings on it which are used for the purposes of agriculture, for no contrast between land and buildings

is implied by s. 14 (2); thus a lease of land with greenhouses on it, used for the purpose of a market garden or nursery ground, appears to be within the benefit of the exemption, cf. *Purser v. Worthing Local Board*, *infra*, p. 316, where the whole matter is discussed at some length. It is submitted that a lease which is within the benefit of the exemption, will not lose that benefit because the land which is the subject of the lease is used immediately before the determination, whether by the lessee or by any other person, for the exercise of sporting rights or for some other non-agricultural purpose, provided that the main user at that time is for agriculture, cf. notes on definition of "agricultural land," *infra*, p. 314.

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AGRICUL-
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A difficult question may arise where only a part of the land which is the subject of the lease that determines is at the time of the determination agricultural land, and where the rest of the land leased is not agricultural land. It is submitted that in such a case the exemption is not wholly lost, but that no duty should be levied in respect of that part of the land leased which is agricultural land. If this view is correct the value of the benefit should be ascertained in respect only of the non-agricultural land.

(c) **Where the Original Term of the Lease did not exceed Twenty-one Years.**—The "term of a lease" is defined in s. 41, see note thereon, *infra*, p. 302. By "the original term" here is apparently meant the term (as defined in s. 41) specified in the lease, whether or no the lease may have been surrendered before the expiration of that term, but including the period for which the lease may be renewed, in pursuance of a covenant in the lease. Thus, if a lease is granted for twenty-one years, no reversion duty is chargeable on its determination; if for twenty-eight years, reversion duty is chargeable upon its determination, although it may be surrendered after the expiration of fifteen years. Sub-s. (3) provides a partial relief in certain cases of surrender; and it is from the use of the phrase "the original term" in sub-s. (3), that its meaning in sub-s. (2) can be gathered. As to the computation of a term in order to ascertain whether it does or does not exceed twenty-one years, see the note on "term of years" in s. 1 (a), *supra*, p. 69. It is submitted that if a reversionary lease be granted to commence upon the determination of the original lease, and the terms of both leases together exceed twenty-one years, but the term of either lease taken by itself does not exceed twenty-one years, no reversion duty is payable on the determination of that lease, *vide infra*, p. 132.

In the case of a lease for a life or lives, it is submitted that the definition of "term" in s. 41, *infra*, p. 302, must be read into s. 14 (2), and that, therefore, the "original term" of such a lease is a term calculated in accordance with that definition. In other words, if a lease for life or lives is granted, the term of which if calculated at the time of the grant in accordance with the definition would not exceed twenty-one years, no reversion duty is leviable on the determination of such a lease, even if the actual life or lives for the currency of which the lease was granted have continued for a period exceeding twenty-one years.

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Example.—A lease is granted in 1885 to A for life. The mean expectation of A's life is then twenty years. A, however, lives for twenty-five years after 1885. The lease expires on A's death in 1910. It is submitted that no reversion duty is payable.

(d) Where the Interest of the Lessor expectant on the determination of a Lease is a Leasehold Interest which does not exceed Twenty-one Years.—See the example (b) at p. 126, *supra*; if the lease to B had not more than twenty-one years to run at the determination of the lease to C, by virtue of s. 14 (2) no reversion duty would have been leviable. The date when the superior leasehold interest expires should be ascertained, it is submitted, according to the principles suggested in the note headed "When term commences and ends," *supra*, p. 69. In order to see whether a leasehold interest not exceeding twenty-one years is left at the determination of the under-lease, the date of the determination of the under-lease should in every case be excluded from the calculation. As to the case where the reversionary interest is a copyhold interest of the class referred in s. 40 (2), *vide infra*, p. 298.

Examples.—(a) A grants to B a lease for a term of years which expires on March 25th, 1931. B grants to C a lease for a term of twenty-one years which expires on March 25th, 1910. On the determination of the lease to C, B is left with a leasehold interest not exceeding twenty-one years.

(b) The lease to C expires on March 24th, 1910. B is left with a leasehold interest of twenty-one years and one day, that is, an interest exceeding twenty-one years.

The words "a leasehold interest" as used in s. 8 (2) do not appear to include an *interesse termini* created by a reversionary lease, cf. *Lewis v. Baker*, [1905] 1 Ch. 46, and the cases there cited; also *Lord Llangattock v. Watney, Combe, Reid & Co., Limited*, [1910] 1 K. B. 236; [1910] W. N. 103. It is submitted, then, that if, at the determination of an under-lease, the under-lessor holds a reversionary lease for so long a term that the unexpired term of the original lease and the term of the reversionary lease added together exceed twenty-one years, that fact does not exclude the under-lessor from the benefit of the exemption. This view is supported by the fact that the definition of "lease" in s. 41, *infra*, p. 302, contains no mention of a reversionary lease. But it is true that that definition does not purport to be exhaustive; and it is not impossible that, following the principle adopted in *R. v. Marglebone Vestry* (1888), 20 Q. B. D. 415, a contrary view might be taken to that above submitted.

(e) Upon Surrender and Grant of New Lease.—The "lease of any land" referred to in sub-s. (3) must be a lease not within the benefit of sub-s. (1) or (2); for if it were within those provisions there would be a total exemption from this duty, and the partial exemption given by sub-s. (3) would be unnecessary. The definition of "term" in s. 41, *infra*, p. 302, applies to the word as used in s. 14 (3). The question when the term of the original lease

expires, and the question whether the term of the new lease extends at least twenty-one years beyond that date, should both, it is submitted, be answered upon the principles suggested in the note headed "When term commences and ends," *supra*, p. 69. Sub-s. (3) does not specify any definite time after the surrender within which the new lease must be granted in order to obtain the exemption; but it seems clear that the exemption will not enure unless the surrender and grant of the new lease are in effect parts of the same transaction. The agreement for the surrender may be express or implied; but agreements for this purpose are usually express.

In order that the exemption should attach, it is not necessary that the rent reserved and the covenants in the new lease should be same as in the surrendered lease. The new lease may apparently be granted by the "lessor" for the time being, as defined in s. 41, *infra*, p. 303. The allowance to be given is $2\frac{1}{2}$ per cent. of the duty for every year of the original term of the lease which is unexpired when the lease is determined, up to 50 per cent. of the whole. As to the meaning of "original term," *vide supra*, p. 131. "Year" in this connection appears to mean a year of 365 days (or 366 days), counting from the anniversary of the commencement of the original term; and excluding or including that anniversary according to the intention of the parties when they entered into the lease, see the note "When term commences and ends," *supra*, p. 69; it can scarcely mean a calendar year. There appears to be no allowance except for a completed year; and to be no discretion in the Commissioners to refuse or modify the allowance. The provision for the treating as paid of the sum allowed appears to be made for the purpose of sub-s. (4).

Example.—A grants to B a lease for twenty-eight years from 25th March, 1900. The lease would ordinarily expire on 25th March, 1928. But B surrenders the lease as from 28th September, 1910; and is given by A a fresh lease for forty years from 29th September, 1910. The fresh lease extends to 29th September, 1950. Seventeen and a half years of the original term were unexpired at the time of the surrender. A is entitled to an allowance of 17 times $2\frac{1}{2}$ per cent., or $42\frac{1}{2}$ per cent. of the duty.

An appeal lies under s. 33, *infra*, p. 266, against a refusal by the Commissioners to make an allowance, or against the making of an insufficient allowance, under sub-s. (3).

(f) Credit against Reversion Duty for Increment Value Duty already Paid, and *vice versa*.—Increment value duty is payable on the occasions specified in s. (1) (a), (b) and (c), *supra*, p. 59, and increment value is defined in s. 2, *supra*, p. 76. By sub-s. (4) of s. 14 it is intended to provide that increment value shall not be taxed twice over, once to increment value duty, and once to reversion duty. This sub-section is not very logically drawn, because increment value can scarcely be said to be "identical" with a benefit, but the meaning is fairly clear, namely, that the cause of the "increment value" (*supra*, p. 77), and the cause of the "value of the benefit" (*supra*, p. 124), must be wholly or in part the same, if any relief is to be given from the one duty on account

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VALUE DUTY
ALREADY PAID
AND *vice versa*.

of the payment of the other. It is left to the discretion of the Commissioners in either case to say what sums (if any) are to be credited to the duty which falls to be paid last. It appears that the allowance should be made (if the conditions of sub-s. (4) are fulfilled) at however long an interval after the payment of the first duty the second duty is leviable, for sub-s. (4) imposes no limit of time. Where, under the provisions of sub-s. (3), an allowance is made in respect of the reversion duty, the full duty is treated for the purposes of sub-s. (4) as having been paid.

An appeal lies against the determination of the Commissioners upon the matters provided for in sub-s. (4), under s. 33, *infra*, p. 266. And if an apportionment of duty becomes necessary for this purpose, it would appear that such an apportionment can (where this is desirable) be separately appealed against.

Example (a).—A ninety-nine years' lease, granted in 1816, expires in 1915. The value of the benefit ascertained by a comparison between the total value in 1816 and in 1915, as described at p. 124, *supra*, is £2000. Reversion duty is paid thereon. The property is sold in 1918. The increment value on the occasion of the transfer on sale, ascertained by a comparison between the original value and the site value on the occasion on which increment value duty becomes due, that is, on the occasion of the transfer on sale, as described at p. 77, *supra*, is £600. If the Commissioners are satisfied that part (say £400) of the increment value accrued before 1915, they should, if it is submitted, allow increment value duty to be paid on £600 less £400, or £200.

(b) Land which is subject to a ninety-nine years' lease expiring in 1929 is sold in 1920. The original site value (estimated as on 30th April, 1909, see p. 230, *infra*), is £2500; and the site value on the occasion of the transfer on sale in 1920, is £3500. Increment value duty is paid on an increment value of £1000, representing the difference between £2500 and £3500. On the determination of the lease in 1929, assume the value of the benefit on which reversion duty is *prima facie* payable to be £3000. If the Commissioners are satisfied that part (say £500) of the value of the benefit accrued between 1909 and 1920, they should, if it is submitted, allow reversion duty to be paid on £3000 less £500, or £2500.

Note that where the taxpayer has any choice in the matter it is better for him to pay increment value duty rather than reversion duty, owing to the allowance made off undeveloped land duty in respect of payments of increment value duty, *infra*, p. 140.

(g) **Foreclosure of Mortgage.**—It has been submitted (*supra*, p. 130) that a reversion acquired by a foreclosure before 30th April, 1909, is purchased within the meaning of sub-s. (1), and that in such a case if the lease determines within forty years of the date of the foreclosure, no reversion duty is payable at all. But, however that may be, it is certain that reversion duty will not be payable in a greater measure than is provided by sub-s. (5). Generally, upon sub-s. (5), it is to be noted that the benefit of that sub-section

enures when the mortgage has been effected before 30th April, 1909, and does not depend on the date of the foreclosure, except that the foreclosure must have taken place before the lease determines.

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FORE-
CLOSURE OF
MORTGAGE.

The total value of the land at the time of the determination of the lease, is by virtue of s. 13 (2), *supra*, p. 122, to be ascertained on the principles laid down in s. 25 (3), *infra*, p. 200.

Example.—The reversion of a thirty years' lease which will determine in 1920 is mortgaged to A in 1908. He forecloses in 1915, when the amount payable under the mortgage is £58,000. The total value of the land at the time of determination of the lease is £60,000. The total value of the land at the time of the original grant of the lease is ascertained to have been £20,000. But for the provisions of sub-s. (5), A would have had to pay duty on the whole value of the benefit; that is, on £60,000 *less* £20,000, or £40,000; and the duty payable would have been £4,000. But by virtue of this provision he need only pay as duty a sum equal to the difference between £60,000 and £58,000, *i.e.* a sum of £2,000.

15.—(1) Reversion duty shall be recoverable from any lessor to whom any benefit accrues from the determination of a lease as a debt due to His Majesty, but shall rank *pari passu* with all other debts due from such lessor. Recovery of reversion duty.

(2) Every lessor shall, on the determination of a lease on the determination of which reversion duty is payable under this section, deliver an account to the Commissioners setting forth the particulars of the land and the estimated value of the benefit accruing to the lessor by the determination of the lease.

(3) If any person who is under an obligation to deliver an account under this section knowingly fails to deliver such an account within the period of three months after the determination of the lease, he shall be liable to pay to His Majesty a sum not exceeding ten per cent. upon the amount of any duty payable under this section, and a like penalty for every three months after the first month during which the failure continues.

(4) Section seventeen of the Customs and Inland Revenue Act, 1885 (which relates to the power to assess duty according to accounts rendered, and to 48 & 49 Vict. c. 51.

Sect. 15. obtain other accounts), shall apply with respect to any account delivered under this section (with the exception of any provisions relating to appeals).

Incidence of Reversion Duty.—Sub-s. (1) is the only enactment which shows that the reversion duty is payable by the lessor. The “lessor” is defined in s. 41, *infra*, p. 303, and includes (as well as an under-lessor) the person for the time being entitled to the reversion, whether freehold or leasehold, expectant on the determination of the lease. There appears to be nothing in the Act to prevent the lessor contracting himself out of the obligation to pay reversion duty; such an arrangement may perhaps be found convenient when a reversionary lease is granted, or when a new lease is granted after a surrender. See the remarks made on this subject with regard to increment value duty, *supra*, p. 91.

“Any benefit” in sub-s. (1) must mean any benefit which has a value as defined in s. 13 (2), *supra*, p. 122.

As to the power to charge sums paid in respect of this duty on settled land and on land vested in a trustee, see s. 39 (1), (2), (3), *infra*, p. 293; and to add such sums to the security, when payable by the mortgagee, see s. 39 (4).

Recovery.—Reversion duty is recoverable as a “debt due to His Majesty,” a phrase which seems to have the same effect as the phrase “a debt due to the Crown” in s. 4 (4), which is discussed, *supra*, pp. 95-6. Note, however, that reversion duty is to rank *pari passu* with the other debts of the lessor, and that therefore neither the Preferential Payments in Bankruptcy Act, 1888, 51 and 52 Vict. c. 62, s. 1 (1) (a), nor the Companies Consolidation Act, 1908, 8 Edw. 7, c. 69, ss. 107 and 209 (1) (a), have any application to this duty. In fact, the reversion duty appears by these words to be postponed to the various classes of debts which are given priority by those sections.

The reversion duty is payable apparently as soon as it is assessed. If an account is taken by a person appointed by the Commissioners under s. 17 (1) of the Customs and Inland Revenue Act, 1885, *infra*, p. 328, any expenses of taking that account may in certain circumstances be charged on the lessor under s. 17 (2) as an addition to the reversion duty.

Assessment of Reversion Duty: Account.—By virtue of sub-ss. (2) and (4), the reversion duty is to be assessed by the Commissioners upon an account delivered by the lessor, or, if they are dissatisfied therewith, upon an account taken by a person appointed by them under s. 17 of the Act of 1885, which section applies in either case. Section 17 is set out, *infra*, p. 328, with the provisions relating to appeals shown in italics. Note that the other sections of the Act there set out are not applied to reversion duty. There is no express provision for the assessment of the duty where no account is delivered. In such a case it would seem that the Commissioners can only proceed for penalties under s. 15 (3) of the present Act, and must assess the duty before they can proceed.

The account to be delivered by the lessor must set forth the particulars of the land, as well as his estimate of the value of the benefit. As s. 15 (2) of the Act of 1885 is not applied to reversion duty, it is difficult to see how the Commissioners will have power to prescribe the particulars required and the form of the account; yet some direction by them upon these matters would appear to be necessary.

As to the meaning of "lessor" and "value of the benefit," see "Incidence of reversion duty," *supra*. The estimate should, it is submitted, be prepared on the principles indicated at p. 124, *supra*. The account is to be rendered "on the determination of a lease [see p. 123, *supra*], on the determination of which reversion duty is payable"; and the lessor will, it is submitted, be well advised to render such an account on the determination of any lease not within the provisions of sub-s. (1) or sub-s. (2) of s. 14 of the present Act. It might be possible to read s. 14 (2) as meaning that no account need be delivered in cases where the value of the benefit is *nil*, or where the provisions of s. 8 (5) prevent any reversion duty from being payable; but it can scarcely have been intended to make the lessor the sole judge of these matters, and as a penalty is attached by s. 14 (3), *infra*, to the failure to deliver an account, it will be best to render an account even where the lessor considers that he is, for either of the reasons last mentioned, not assessable to the duty. The account must be delivered within three months after the determination of the lease, s. 14 (3).

It does not appear to be necessary for persons or bodies exempted under s. 35, s. 37, or s. 38, *infra*, pp. 277-288, to deliver the account required by the present section except where reversion duty is payable by them in the circumstances suggested in the notes on pp. 281, 288, *infra*.

Appeal.—An appeal against the determination by the Commissioners of the total value of the land for the purpose of arriving at the value of the benefit, appears to be given by the opening words of s. 33 (1), *infra*, p. 266. And an appeal against the assessment of the duty is also given by s. 33 (1); see note on the words "against the amount of any assessment of duty," *infra*, p. 271.

Penalty on Failure to deliver Account.—The person who is under an obligation to deliver an account is discussed *supra*. Under s. 14 (3), if he knowingly fails to do so within three months after the determination of the lease, he is liable to a penalty. The words "within three months" appear to exclude the first day and include the last; *e.g.* if the lease determines on 25th March, the account must be delivered on or before 25th June, *cf.* *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161. The word "knowingly" in s. 5 of the Companies Act, 1900, has been held to mean "with knowledge of the facts," and not to afford any protection in a case of ignorance of the law (*Burton v. Bean*, [1908] 2 Ch. 240); but that section deals with the responsibility of directors with respect to allotment. It is submitted that it does not apply here, and that the presence of the word "knowingly" imports that the lessor is not amenable to the penalty if he is, for any reason, genuinely unaware that he is liable to render an account; but *cf.*

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ASSESSMENT
OF REVER-
SION DUTY:
ACCOUNT.

Sect. 15. *Att.-Gen. v. Till*, [1910] A. C. 50. The word "knowingly" does not appear in the corresponding provisions of s. 4 (2), *supra*, p. 88, s. 20 (3), *infra*, p. 168, or s. 26 (2), *infra*, p. 229; it does appear in s. 94, *infra*, p. 322, and in s. 31 (3), *infra*, p. 257, the word "willfully" is used. If the lessor fails within the meaning of sub-s. (3) to deliver an account within three months, he is liable to a penalty, but he is not liable to the further penalty provided in the subsection if the failure does not continue beyond the end of the fourth month. The further penalty becomes payable, however, if the failure continues into the fifth month; and a like further penalty becomes payable if the failure continues into the eighth month.

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PENALTY ON
FAILURE TO
DELIVER
ACCOUNT.

Example.—A lease, on the determination of which reversion duty becomes payable, determines on 25th March. A is the lessor, and knowingly fails to deliver an account on or before the 25th June. A is liable to a penalty not exceeding 10 per cent. of the amount of the duty payable. Suppose A delivers the account on or before the 25th July, he is liable to no further penalty. If A has not delivered the account before the 26th July, he is liable to a further penalty not exceeding 10 per cent. of the amount of the duty payable. If A has not delivered the account before the 26th October, he is liable to a further penalty so calculated, and so on.

There is no provision for the penalty being recovered upon summary conviction, like the fine in s. 4 (2), *supra*, p. 88. The penalty can, therefore, be recovered apparently only in the same way as the duty itself is recoverable, *vide supra*, p. 95. As the amount of the penalty depends upon the amount of the duty payable, the Commissioners must apparently assess that duty before they proceed to recover the penalty. It seems very doubtful whether any court before which such proceedings come will be able to review such an assessment by the Commissioners. The provisions of s. 22 of the Inland Revenue Regulation Act, 1890 (set out, so far as is material, *supra*, p. 88), appear to apply to the penalty now under discussion.

Section 94 of the present Act, *infra*, p. 322, makes the knowingly making a false statement for the purpose of obtaining any allowance, etc., an offence punishable with imprisonment.

Undeveloped Land Duty.

Duty on site
value of un-
developed
land.

16.—(1) Subject to the provisions of this Part of this Act there shall be charged, levied, and paid for the financial year ending the thirty-first day of March nineteen hundred and ten and every subsequent financial year in respect of the site value of undeveloped land a duty, called undeveloped land duty, at the rate of one halfpenny for every twenty shillings of that site value.

(2) For the purposes of this Part of this Act land shall be deemed to be undeveloped land if it has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glass-houses or greenhouses), or is not otherwise used bonâ fide for any business, trade, or industry other than agriculture:

Provided that—

- (a) Where any land having been so developed or used reverts to the condition of undeveloped land owing to the buildings becoming derelict, or owing to the land ceasing to be used for any business, trade, or industry other than agriculture, it shall, on the expiration of one year after the buildings have so become derelict or the land ceases to be so used, as the case may be, be treated as undeveloped land for the purposes of undeveloped land duty until it is again so developed or used; and
- (b) Where the owner of any land included in any scheme of land development shows that he or his predecessors in title have with a view to the land being developed or used as aforesaid, incurred expenditure on roads (including paving, curbing, metalling, and other works in connexion with roads) or sewers, that land shall, to the extent of one acre for every complete hundred pounds of that expenditure, for the purposes of this section, be treated as land so developed or used although it is not for the time being actually so developed or used, but for the purposes of this provision no expenditure shall be taken into account if ten years have elapsed since the date of the expenditure, or if after the date of the expenditure the land

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having been developed reverts to the condition of undeveloped land, and in a case where the amount of the expenditure does not cover the whole of the land included in the scheme of land development, the part of the land to be treated as land developed or used as aforesaid shall be determined by the Commissioners as being the land with a view to the development or use of which as aforesaid the expenditure has been in the main incurred.

(3) For the purposes of undeveloped land duty, the site value of undeveloped land shall be taken to be the value adopted as the original site value or, where the site value has been ascertained under any subsequent periodical valuation of undeveloped land for the time being in force, the site value as so ascertained :

Provided that where increment value duty has been paid in respect of the increment value of any undeveloped land, the site value of that land shall, for the purposes of the assessment and collection of undeveloped land duty, be reduced by a sum equal to five times the amount paid as increment value duty.

(4) For the purposes of undeveloped land duty undeveloped land does not include the minerals.

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Financial Year.—That is, the year from April 1st to March 31st inclusive (Interpretation Act, 1889, s. 22). These words do not appear in connection with increment value duty (s. 1, *supra*, p. 59), or with reversion duty (s. 13 (1), *supra*, p. 122), because those duties are only charged upon specific occasions; but cf. s. 20 (1). The undeveloped land duty is payable at any time after the 1st January in each such year, and is recoverable from the owner of the land for the time being (s. 19, *infra*, p. 165). There is no provision for an apportionment of the duty either (a) where there is a change of owner within the financial year, or (b) where land which is undeveloped land during a portion of the financial year ceases during that year to be undeveloped land by reason of its being developed or used within the meaning of sub-s. (2) at any time after the commencement of the financial year.

Note that the "owner" may be changed during the financial year (even though no new event occurs) by the operation of the definition of "owner" in s. 41, by which the lessee ceases to be "owner" when not more than fifty years of his term are unexpired. See note and examples, *infra*, p. 313. It appears therefore that, in case (a) the person who is the owner at the time (between January 2nd and March 31st inclusive in the year of assessment) when the Crown demands the duty, is liable for the whole duty leviable during the year, for he cannot contract himself out of this obligation. In the case described under (b), the whole of the duty for the year appears to be leviable, for the duty appears to be leviable upon land which was "undeveloped land" in the early part of the year, but which ceases to be so during the year. This might in some cases be a considerable hardship, and where the land has been "undeveloped land" only for a small portion of the year the duty may possibly be remitted as a matter of grace, but there seems to be no provision by which the subject can claim such remission as of right. As to the case of land reverting to the condition of undeveloped land, see sub-s. (2), proviso, and note, *infra*, p. 152.

Assessment, Incidence and Recovery of the Duty.—See s. 19.

Sect. 16. **Exemptions.**—See ss. 17, 18, *infra*, pp. 155, 158, and ss. 35, 37, 38, *infra*, pp. 277 *seqq.*

Site Value.—The undeveloped land duty is charged upon site value, ascertained according to the provisions of s. 25 (4), *infra*, p. 200. This is to be distinguished from “the site value on the occasion on which increment value duty is to be collected,” which is defined in s. 2, *supra*, p. 76. Site value for the purpose of undeveloped land duty does not include the value of minerals (s. 16 (4)). The exemptions or partial exemptions conferred by ss. 17 and 18 depend upon the amount or nature of the site value.

The actual amount of site value upon which the duty is to be charged is (by sub-s. (3)) the value adopted as the original site value under s. 27, *infra*, p. 240, or the site value as ascertained under any subsequent periodical valuation made by virtue of s. 28 and the proviso thereto, *infra*, p. 250. See also second para. of s. 19, *infra*.

Reduction in respect of increment value duty paid, etc.—But where increment value duty under s. 1, *supra*, p. 59, has already been paid in respect of the increment value of any land, the site value for the purposes of the undeveloped land duty is to be reduced by a sum equal to five times the amount so paid (s. 16 (3), proviso), that is, while the increment value duty is levied at the rate laid down in s. 1, *supra*, p. 59, by the whole of the increment value on which duty has been paid. As to the meaning of “increment value,” *vide supra*, p. 77. It is submitted that the reduction allowed by this proviso should be made immediately upon the payment of increment value duty as well as in every subsequent year, and that a reduction should be allowed in respect of every payment of increment value duty. Note that no reduction is here allowed in respect of reversion duty, so that if, under the provisions of s. 14 (4), a payment of reversion duty is treated as being also a payment on account of increment value duty, such a payment does not appear to give any claim to a reduction in respect of undeveloped land duty.

An appeal lies against the refusal of a reduction or an insufficient reduction or against any apportionment of duty under this proviso, under s. 33, *infra*, p. 266.

The site value for the collection of this duty is to be reduced by the deduction of the amount of a capital sum or instalment paid to a rating authority in respect of the matters mentioned in s. 36, *infra*, p. 279.

Examples.—(a) The original site value of certain undeveloped land is £1000. In 1910–11 the fee simple of the land has been transferred on sale, and £20 increment value duty has been paid. Immediately on that payment the site value for the purpose of assessing undeveloped land duty should be reduced by $5 \times £20$, or £100, and the duty should be charged at £1000 less £50, or £950. In 1911–12 the fee simple has passed on the death of the owner and £10 increment value duty has been paid. The site value for

the purpose of assessing the undeveloped land duty should be reduced by $5 \times (£20 + £10)$ or £150, and the duty should be charged on £1000 *less* £150, or £850.

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SITE VALUE.

- (b) Now suppose the whole of the land to have been let on a lease which expired in 1909-10, and reversion duty to have been paid on the determination of the lease in respect of a benefit which was identical with the increment value accruing upon the transfer on sale in 1910-11. Suppose, therefore, that under s. 14 (4) no increment value duty was levied upon the occasion of the transfer on sale. But suppose an increment value duty of £10 was paid upon the death in 1911-12. The site value for the purpose of assessing the undeveloped land duty will be reduced by only $5 \times £10$, or £50, and the sum paid on account of reversion duty will not be considered. The site value upon which the undeveloped land duty is assessed will be £1600 *less* £50, or £950.

Minerals, etc.—Undeveloped land does not include minerals (sub-s. (4)). The site value for the purpose of undeveloped land duty does not, therefore, include the value of minerals. As to the meaning of "minerals," *vide infra*, p. 169. For the special provisions as to site value in the case of statutory companies, see s. 38, *infra*, p. 287.

Undeveloped Land.—Land is defined in s. 41, *infra*, p. 301. It is deemed to be undeveloped land—

(i) If it has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses and greenhouses);

(ii) If it is not used (otherwise than by the erection of such dwelling-houses or buildings) *bonâ fide* for some business, trade, or industry other than agriculture (sub-s. (2)).

Land which has once been developed may, however, be again treated as undeveloped land under the conditions described in proviso (a) to sub-s. (2), see note on "Reversion to undeveloped state," *infra*, p. 152. And land within the conditions described in proviso (b) is not to be treated as undeveloped land.

Various exemptions (total or partial) from the undeveloped land duty are created by ss. 17 and 18, *infra*, pp. 155 *sqq.*, but these sections do not in form treat the land exempted by them as other than undeveloped land. This distinction has, so far as can be seen, no practical effect, and proviso (b) to s. 16 (2) might quite naturally have been included in s. 17.

Undeveloped land does not include minerals (s. 16 (4)). As to what are minerals, *vide infra*, p. 169.

Land upon which buildings have been erected, which are neither dwelling-houses nor buildings for the purpose of any business, trade, or industry other than agriculture, appears to be undeveloped land. Instances of such buildings will be found in farm buildings (not being dwelling-houses), and various buildings used for the purposes of games, etc., where the buildings are not carried on for

Sect. 16. purposes of business, trade, or industry. As to the latter, see, however, s. 17 (3) (*d*), *infra*, p. 156.

UNDEVELOPED LAND.

Dwelling-houses.—See note to s. 8, *supra*, p. 110.

Buildings.—It has often been necessary to decide whether particular erections are “buildings” within the meaning of Acts of Parliament or private documents; and some of these cases will now be summarized. Principles bearing on the meaning of the word in the present section are suggested, *infra*, p. 146. A wooden shop without footings or foundation, resting on wooden joists not fixed to the ground, and capable, therefore, of being moved in its entirety, was held to be a building within the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122, s. 12), which provides (*inter alia*) that the walls of buildings shall be constructed of incombustible substances (*Stevens v. Gourley* (1859), 29 L. J. C. P. 1). An old railway carriage standing on a plot of land was converted into a dwelling by removing the seats, making an opening in the internal partition, and putting in a stove and chimney; it was held that the conversion made the railway carriage a “new building” within the meaning of ss. 157 (2) and 159 of the Public Health Act, 1875, and it was not denied that the carriage before its conversion was already a building (*Hanrahan v. Leigh-on-Sea U. D. C.*, [1909] 2 K. B. 257). On the other hand, a shed, in which some agricultural implements had been kept, and which was made of boards nailed to posts let into the ground, and had no floor, was held not to be a building within s. 27 of the Reform Act (2 & 3 Will. 4, c. 45), which gives the borough franchise to “a person occupying any house, warehouse, or counting-house, shop, or other building”; the Court seems to have thought there was merely the pretence of a shed (*Morish v. Harris* (1865), L. R. 1 C. P. p. 160), and ERLE, C.J., said that a building for the purposes of that section “ought to be in some degree adapted both to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of a building” (*Powell v. Boraston* (1865), 34 L. J. C. P. 73, at p. 75; see also *Whitmore v. Town Clerk of Wenlock* (1843), 13 L. J. C. P. 55). “A wall would not be a building within the meaning of” a local Act which prevented the erection of a building within a certain distance of a road (*R. v. Gregory* (1833), 5 B. & Ad., *per* PARKE, J., at p. 561); and a fence merely marking a boundary was said not to be a building within the words “building, structure, or erection,” in s. 75 of the Metropolis Local Management Act, 1862 (25 & 26 Vict. c. 102); but a wall 7 feet high by 9 inches thick erected between a dwelling-house and a road was held to be such a building (*Ellis v. Plumstead Board of Works* (1893), 68 L. T. 291). A wall 11 feet high, strengthened by piers, and intended to serve as well for an advertisement station as for a boundary wall was held to be a “building, structure, or erection” within the meaning of s. 75 of the Act of 1862 (*Lavy v. London County Council*, [1895] 2 Q. B. 577). A hoarding of a permanent nature, 156 feet long and 15 feet high, erected for the purpose of the trade of bill-posting, was held to be a “building for the carrying on of any offensive trade or calling” within the

meaning of a covenant in a conveyance (*Nussey v. Provincial Bill Posting Co.*, [1909] 1 Ch. 734, *infra*, p. 149). And the building of a garden wall alongside a road to the height of 11 feet, and the erection of a vinery against it, were held to be the erection of buildings in breach of a covenant in a conveyance to erect "no buildings" to front the road opposite the vendee's land; the building of another part of the wall to the height of 8 feet 6 inches was held not to be such erection (*Bowes v. Law* (1870), L. R. 9 Eq. 636). A yard covered over by a roof supported on the walls of the house and of the yard was held to be a "building" within s. 75 of the Act of 1862 (*Clark v. St. Pancras* (1869), 34 J. P. 181). A churchyard wall, one side of which was built so as to form a covered way, was not a "building" within s. 3 of the Disused Burial Grounds Act, 1884, 47 & 48 Vict. c. 72, which prohibits (generally) the erection of buildings on a disused burial ground (*St. Botolph, Aldersgate*, [1900] P. 69); nor was a screen which it was proposed to erect upon such a burial ground in order to prevent houses which overlooked it from having any right to light (*Mayor, etc., of Paddington v. A.-G.*, [1906] A. C. 1).

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Greenhouses and a storeroom, carried on for profit, which stood within the same enclosure as the nurseryman's dwelling-house were held to be part of a "house or other building" under s. 92 of the Lands Clauses Act, 1845, so that a railway company which required only to take the greenhouses and a small portion of land immediately adjoining was obliged under s. 92 to take the whole enclosure (*Salter v. Metropolitan District Rail. Co.* (1879), L. R. 9 Eq. 432). A greenhouse belonging to a private house, but standing detached from it, was held to be a "building" within s. 3 of the Prescription Act, 1832 (2 & 3 Will. 4, c. 71), where the words are "any dwelling-house, workshop, or other building" (*Clifford v. Holt*, [1899] 1 Ch. 698). It was held further that glasshouses built upon dwarf brick walls like ordinary greenhouses were buildings, and that though they stood upon a market garden, they were none the less to be rated as buildings under the Agricultural Rates Act, 1896, s. 1 of which provides that agricultural land shall pay one-half only of the rate payable in respect of buildings and other hereditaments (*Smith v. Richmond*, [1898] 1 Q. B. 683; [1899] A. C. 448). A case was there distinguished, in which a market garden, together with the glasshouses upon it, had been held to be entitled to a partial exemption from rates given to "market gardens or nursery grounds" by s. 211(1)(b) of the Public Health Act, 1875, where there is no mention of buildings (*Purser v. Worthing Local Board* (1887), 18 Q. B. D. 818). As to the bearing of these cases on the definition of agricultural land, *vide infra*, p. 316. Glasshouses and greenhouses are expressly included by the present section, whether, apparently, they are used for the purposes of business, trade, or industry, or not.

Farm buildings (so far as they are not dwelling-houses) and other buildings used for the purposes of agriculture, are excluded by s. 16 (2), as pointed out *supra*, p. 143.

A railway embankment was held to be a building within the meaning of a covenant in a conveyance not to erect or permit the erection of any buildings other than private dwelling-houses on

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the land conveyed, and COLLINS, M.R., said that "a building is not necessarily limited to a structure of bricks and mortar"; such an embankment, according to COZENS-HARDY, L.J., "is not like a mere manure-heap: it is a thing elaborate in construction: it is permanent in its nature (*Long Eaton Recreation Grounds v. Midland Rail. Co.*, [1902] 2 K. B. 574, at pp. 581, 588). As to the exemption for railway companies, see s. 38, *infra*, p. 287.

A wet dock or tidal basin was held to be property (other than land) within the meaning of the Lighting and Watching Act (3 & 4 Wm. 4. c. 90, s. 33), by which "houses, buildings, and property (other than land)" are rated higher than "land" (*Peto v. West Ham* (1859), 28 L. J. M. C. 240); but a canal with its appurtenant towing-path, bridges, and dry dock, was held to be "land" within the same section (*R. v. Neath Overseers* (1871), L. R. 6 Q. B. 707). It is submitted, however, that both docks and canals should be treated as land developed, either by being built upon or by being used for any business, etc., under the present Act; they will often be covered by the exemption granted by s. 38, *infra*, p. 287.

Brick arches supporting a road, and used by a landowner as stores or cellars were held to be a building within s. 7 of the Gasworks Clauses Act, 1847, 10 Vict. c. 15, which prohibits the undertakers from placing pipes "into, through, or against any building," and Lord CAIRNS, L.C., said, "they (the arches) are not the natural formation of the ground under the road; they are artificial, they are the construction of man, they are the putting together of bricks and mortar, and being used for the purpose for which they are used, I am at a loss to conceive why they are not to be included under the word "building" (*Thompson v. Sunderland Gas Co.* (1877), 2 Ex. D. 429, at p. 434).

It is submitted that any construction of the kinds which have been held to be buildings in the cases cited, and any construction which is artificially put together, which is adapted to be used by man, and which has the degree of durability included in the idea of a building, although it is not necessarily constructed of bricks and mortar (see *Powell v. Boraston*, *Long Eaton Recreation Grounds v. Midland Rail. Co.*, and *Thompson v. Sunderland Gas Co.*, *supra*), is a building within the meaning of s. 16 (2). The question, how much of the land surrounding such a construction is developed land, will be separately considered, *infra*, p. 146. On the other hand, the cases above cited in which constructions have been held not to be "buildings" are not, it is submitted, necessarily conclusive that the land on which a similar construction stands is undeveloped land.

Land surrounding Buildings.—It is not easy to see how much of the land which surrounds or adjoins buildings (other than dwelling-houses) can be said to be land which has "been developed by the erection of buildings" within the meaning of s. 16 (2) and how much of such land is undeveloped land. The case of land adjoining dwelling-houses is dealt with in s. 17 (4), *infra*, p. 156, and it is clear that any such land which does not come within the provisions of that sub-section is to be deemed undeveloped land. In the case of other buildings, it can scarcely be said that the land built upon is confined to the actual space upon which the walls of the building

stand and the space which they enclose. It is submitted that sufficient land to give access to the building must, at any rate, be treated as land developed by being built upon; as well as the minimum quantity of land which is necessary to the enjoyment of the building for the purposes for which it is used, *e.g.* sufficient land to give light and air to the building. It must be a question of fact in each case how much land is necessary for such purposes. In many cases, no doubt, as where land adjoining a factory is required for carts to stand on, or for the storage of raw material, or where land is used for the playground of a school which is carried on as a business, the land adjoining a building is land developed by being used *bonâ fide* for any business, trade, or industry, other than agriculture (*infra*, p. 149), and the present question will not arise. But land which has been acquired for future extensions, say, of a factory or a shipbuilding yard, will clearly be undeveloped land, unless it is in the meantime used *bonâ fide* for any business, etc. It will therefore be advisable where spare land has been so acquired, and until it is ready to be built upon, to turn this land to account for some purpose of the business, if this can be done *bonâ fide*.

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As regards glasshouses and greenhouses, it would appear that very little of the surrounding land can be included with them as developed land, because the purposes for which such land is used will in most cases be agricultural, *vide infra*, p. 316.

Incomplete Buildings.—It is submitted that land upon which the construction of dwelling-houses or buildings within the meaning of s. 16 (2) has been *bonâ fide* commenced with a view to completion, and upon which work has not been abandoned, is "land developed by being built upon," although the building has not been completed. A case may be compared, in which one of seven buildings built in a row and intended for dwelling-houses was completed only so far that its walls and roof were finished, part of the flooring laid, and the internal walls and ceilings ready for plastering, was held to be a "building" within s. 6 of the Malicious Damage Act, 1861, 24 & 25 Vict. c. 97, so that a person unlawfully and maliciously setting fire to it was guilty of felony (*R. v. Manning* (1871), 1 C. C. R. 338).

A case decided where a general line of buildings within the meaning of s. 75 of the Metropolis Local Management Act, 1862, came into existence between the times of the erection of the first wall of a house and the completion of the house, in which it was held that the building had been erected after the general line came into existence (*Wendon v. London County Council*, [1894] 1 Q. B. 227, 812), does not appear to affect the view above submitted.

Constructions put up for the use of workmen during building operations are not usually themselves buildings; thus a two-roomed hut for the storing of tools and for the general convenience of the workmen, and a brick kiln, which were put up on land on which it was proposed to build cottages and which were to be destroyed as soon as the cottages were built, were held not to be buildings within byelaws made under a local Act, which provided that notice should be given of the intention to erect a new building (*Fielding v. Rhyl Improvement Commissioners* (1878), 3 C. P. D. 272).

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Land which cannot be Built upon.—Among the many causes which may make it impossible, or practically impossible, to build upon land, may be mentioned the following:—

(a) Physical difficulties, as in the case of a foreshore, or of the bank of a river (e.g. the lands discussed in *Conservators of River Thames v. Port Sanitary Authority*, [1894] 1 Q. B. 647; *Hackney Corporation v. Lee Conservancy Board*, [1904] 2 K. B. 541), or where there is a watercourse under the land, as in *Puckett and Smith's Contract*, [1902] 2 Ch. 258.

(b) The existence of an easement, say, of light or air, or right of way.

(c) The existence of a covenant or agreement against building, as in the case of the garden reserved for the use of the tenants of several houses in common in *Lady Holland v. Kensington Vestry* (1867), L. R. 2 C. P. 565, and the numerous cases where land is sold or let subject to covenants that certain parts of that land, or that adjoining lands, shall not be built upon (see e.g. *Bowes v. Lar.*, *supra*, p. 145; *Long Eaton Recreation Grounds v. Midland Rail. Co.*, *supra*, p. 146).

(d) A restriction created by a general or special Act; thus, the Public Health Act, 1875, s. 26, prevents building over a sewer in an urban district without the written consent of the urban authority (cf. *In re Brewer and Hankin's Contract* (1899), 80 L. T. 127; *Pemsel v. Tucker*, [1907] 2 Ch. 191); similar provisions are contained in the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), s. 204, and in numerous local Acts. Special Acts, too, often contain provisions which, directly or indirectly, prevent building on particular pieces of land, as in *Hampstead Corporation v. Midland Rail. Co.*, [1904] 2 K. B. 802; [1905] 1 K. B. 538; numerous instances of such provisions will be found in Enclosure Acts (cf. *Meyrick v. Att.-Gen.*, [1894] 3 Ch. 209).

Land which cannot be built upon, either for any of the reasons mentioned or for any other reason, may often have no site value exceeding £50 an acre, and may therefore be within the exemption granted by s. 17 (1): or it may be within one of the exemptions granted by the other sub-sections of s. 17, by s. 18, or by ss. 35, 37, or 38, *infra*, pp. 277 *sqq.*; but if it is not within any of these exemptions, the fact that it cannot be built upon will not prevent it from paying duty as undeveloped land, if it is not developed or used within the meaning of s. 16 (2).

Business, Trade or Industry other than Agriculture.—Agriculture is defined in s. 41, *infra*, p. 304; see also note headed "Other than agriculture," *infra*, p. 152. With reference to the other words in this phrase, it may first be pointed out that "business" and "trade" are not quite interchangeable terms. The word "trade" can scarcely be dissociated from the idea of profit; but there may be many kinds of business which are not carried on with a view to profit. See *Bramwell v. Lucy*, *Doe v. Bird*, *Rolls v. Miller*, *infra*, p. 150.

The following cases in which the words "trade" or "business" appearing in statutes or documents with relation to land have been interpreted, seem to throw light on their meaning in the present

section. The words "trade" or "business" where they occur in the Acts imposing the income tax or the inhabited house duty are generally limited to trades or businesses carried on with a view to profit, and it is not thought necessary here to cite cases decided under those Acts. The carrying on of a charity school under a scheme which prevented its being carried on for profit was held to be a "business" within s. 12 of the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), and the supply of water to the school swimming-bath was held to be "a supply for any trade, manufacture or business" within that section (*Barnard Castle U.D.C. v. Wilson*, [1902] 2 Ch. 746). The carrying on of a boarding-house (*Pidgeon v. Great Yarmouth Water Co.*, [1902] 1 K. B. 310), and of a workhouse school (*South-West Suburban Water Co. v. Marylebone Guardians*, [1904] 2 K. B. 174), have been held to be businesses within the same section, although particular supplies of water were not held to be supplies for the business. Cf. *South Suburban Gas Co. v. Metropolitan Water Board*, [1909] 2 Ch. 666. In *Chester Waterworks v. Chester Union* (1908), 72 J. P. 121, some doubt was thrown, because the carrying on a workhouse was a statutory duty, on the proposition that it constituted a business; but the point was not necessary to the decision, as the carrying on of the workhouse was held not to be a business "for which water is required" in the terms of the special Act there discussed. The point is, at any rate, of little importance in the present connection, because practically all persons or bodies discharging statutory duties are exempt from the undeveloped land duty by the operation of ss. 35, 37 or 38, *infra*, pp. 277 *sqq.* A private boarding-school for boys carried on for profit was admittedly a dwelling-house used for business purposes, though the business was held not to be one "for which water is required" under a special Act similar in its terms to that in the case last cited (*Frederick v. Bognor Water Co.*, [1909] 1 Ch. 149).

The carrying on a boys' school was held to be a breach of a covenant in a lease against carrying on "any trade or business whatsoever" on the demised premises (*Doe d. Bish v. Keeling* (1813), 1 M. & S. 95), and a covenant (in a deed of covenant relating to a building estate) not to carry on "any trade or business or occupation" causing a nuisance, was held to prevent the carrying on of a boys' school (*Wanton v. Coppard*, [1899] 1 Ch. 92). On the other hand, in considering a covenant in a lease not to use or exercise certain specified "trades or businesses or any offensive trade," it was held that the carrying on a private lunatic asylum was not a trade within the latter prohibition, and Lord DENMAN, C.J., said, "Every trade is a business, but every business is not a trade; to answer that description it must be conducted by buying and selling" (*Doe d. Wetherell v. Bird* (1834), 2 Ad. & E. 161). The carrying on of the trade of bill-posting upon a hoarding was held to be a use of the hoarding for an offensive trade or calling within the meaning of a restrictive covenant against the erection of a building "for the carrying on of any . . . offensive trade or calling" (*Nussey v. Provincial Bill-Posting Co.*, [1909] 1 Ch. 734, *supra*, p. 145). A hospital which was not carried on for profit, but in which some of the patients made payments according to their means, was held to be a "business" within the

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meaning of a covenant in a lease not to carry on "any trade, business, or dealing whatsoever, or anything of the nature thereof," and JESSEL, M.R., said, "The question whether it is a business carried on for the purposes of profit or not, is not, in my opinion, material" (*Bromwell v. Lacy* (1879), 10 Ch. D. 691). A home for working girls, in which the girls were boarded and lodged gratuitously under the management of a paid official, was held to be within a covenant in a lease against the carrying on of "any trade or business of any description," and COTTON, L.J., said, "I cannot read the words "trade" and "business" as synonymous . . . it is not essential that there should be payment in order to constitute a business. And the mere fact that there is payment under certain circumstances does not necessarily make a thing a business which if there was no payment would not be a business." LINDLEY, L.J., said, "The word ["business"] means almost anything which is an occupation, as distinguished from a pleasure—anything which is an occupation or duty which requires attention is a business" (*Rolls v. Miller* (1884), 27 Ch. D. 71, pp. 85, 88; cf. *Portman v. Home Hospital Association* (1879), *ibid.*, 81 n.). An occupation such as breeding horses, cattle, and pigs, and growing flowers, carried on for pleasure in the first instance, although the surplus produce is sold, is not a "trade or business" within s. 44 (iii) of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) (*In re Wallis* (1885), 14 Q. B. D. 950). The carrying on a theatre is a business within the meaning of a covenant in a lease not to exhibit any signboard or other notice of trade or business (*Att.-Gen. v. Playhouse, Limited* (1903), 19 T. L. R. 580).

It is submitted that the occupations which have been held to be businesses or trades in the cases above cited, are also businesses or trades within the meaning of the present Act; and the word "industry" is probably intended to include any species of manufacture or handicraft which might not in common parlance be described as a trade or business, although the two latter terms would perhaps be strictly sufficient to include all kinds of industries. What are called "cottage" or "home industries" would no doubt be within these words, though they are sometimes not carried on for the profit of the person who controls or manages them.

The cases cited have mostly been connected with buildings; but it is submitted that the principles laid down are relevant not only to the question whether buildings are erected for the purposes of any business, trade, or industry other than agriculture, but also to the question whether land is otherwise used *bonâ fide* for such purposes within the meaning of s. 16 (2).

Land not otherwise used, etc.—Difficult questions may sometimes arise as to whether land appurtenant to or adjoining buildings used for the purpose of any business, trade, or industry other than agriculture, is land used for such purposes, as in the case of playgrounds attached to a school, the gardens of a hotel, the exercise grounds attached to a private hospital or asylum. See also note on "Land surrounding Buildings," *supra*, p. 146. It is submitted that such land as land on which an advertisement hoarding

is erected (even if the land cannot be said to have been developed by the erection of buildings, see *Lary v. London County Council*, *supra*, p. 144), as the drying-ground attached to a laundry, as land used for open-air entertainments (cf. *Att.-Gen. v. Playhouse, Limited*, *supra*, p. 150), as land used for the purpose of hiring out lawn tennis or football grounds at a profit, possibly even as land used for a racecourse, would all be lands developed by being used for a business, trade, or industry. If land hired out at a profit for the purpose of games or other recreation is (as is submitted) land so developed, it would appear to be free of undeveloped land duty independently of the restrictions imposed by s. 17 (3) (d), *infra*, p. 156. Timber yards and stonemasons' yards are illustrations of lands used for business, etc., which are generally not built upon. A cemetery or burial ground in which graves or rights of burial are sold is probably land used for a business, etc. Cf. *R. v. St. Mary Abbots* (1840), 12 Ad. & E. 824; *R. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515; *St. Giles, Cumberwell v. London Cemetery Co.*, [1894] 1 Q. B. 699; *North Manchester Overseers v. Winstunley*, [1908] 1 K. B. 835; [1910] A. C. 7.

Land which is used during only a part of the financial year for a business, trade, or industry (as in the case of land used for steam roundabouts, etc. (*Hull v. Smallpiece* (1890), 59 L. J. M. C. 97), or for exhibiting a wood and iron bungalow for sale (*London County Council v. Humphreys, Limited*, [1894] 2 Q. B. 755)), appears to render its owner liable to the whole duty for the year. See note "Financial year," *supra*, p. 141.

Bonâ fide.—The meaning of this expression in another taxing Act (Finance Act, 1894, s. 7 (1) (a)), *infra*, p. 349, was discussed recently up to the House of Lords in *Att.-Gen. v. Richmond (Duke)* (No. 1), [1907] 2 K. B. 923; [1908] 2 K. B. 729; [1909] A. C. 466, where the question was whether certain incumbrances had been, in the words of that section, "created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit;" and it is submitted that the principles laid down in that case govern the interpretation of the phrase in the present Act. COZENS-HARDY, M.R., said ([1908] 2 K. B. 741), "*Bonâ fide* is a perfectly well-known term; it is used again and again throughout this statute and in other similar statutes, and, after all, it means nothing more nor less than created in good faith, not as a sham or a mere paper transaction, not collusively or as part of a scheme to defraud anybody;" and KENNEDY, L.J., said at p. 748: "To be not in good faith, a transaction must be purely colourable." It was a necessary part of the decision that a transaction which is not merely colourable or fraudulent does not fail to be a *bonâ fide* transaction, merely because it is done in order, or partly in order, that the necessity for the payment of a duty may not arise; for it was in evidence that the reason of the Duke's creating the incumbrances was "to diminish the capital value of his estate for the purpose of lessening the death duties" (*ibid.*, p. 747). Applying these principles to the present section, then, it is submitted that if land is actually used for any business trade or industry other than agriculture, and if that user is real and not a mere sham, the land so used is not to be treated as undeveloped land, although the reason—or one of the

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reasons—for putting the land to that use is that the land may not subject its owner to liability for the undeveloped land duty.

Other cases in which the term *bona fide* has been discussed in various Acts of Parliament are *Alexander v. Newman* (1846), 2 C. B. 122; *Fulham Guardians v. Thunet Guardians* (1881), 6 Q. B. D. 610; 7 Q. B. D. 539; *Penn v. Alexander*, [1893] 1 Q. B. 522. As to the "evasion" of a taxing Act, see *Att.-Gen. v. Beech*, [1898] 2 Q. B. 147, *infra*, p. 336; *Simms v. Registrar of Probates*, [1900] A. C. 323; *Bullivant v. Att.-Gen. for Victoria*, [1901] A. C. 196. See also *Etherington v. Wilson* (1875), 1 Ch. D. 160, pp. 160, 170.

For a case in which the erection of a "building" was held to be a mere pretence, see *Powell v. Boraston*, *supra*, p. 144.

Other than Agriculture.—Agriculture is defined in s. 41, see note thereon, *infra*, p. 314. A grazing-ground near a cattle-market upon which cattle are put after being conveyed by rail, and before being brought to sale, would appear to be undeveloped land. And it can scarcely be said that land which is used for agriculture, but over which sporting rights are exercised, is used for a business, trade, or industry other than agriculture. But it is submitted that where land used for agriculture is also used, say, by a trainer of racehorses for his gallops, or by an advertising agent for his hoardings, that land is used for a trade or business other than agriculture, if it can be established that the user for non-agricultural purposes is the paramount user. As to glasshouses and greenhouses, *vide supra*, p. 145.

Reversion to the Condition of Undeveloped Land.—Land which has been developed or used within the meaning of sub-s. (2) may revert to the condition of undeveloped land for either of the causes mentioned in proviso (a). If it so reverts, it shall (after an interval) be treated as undeveloped land for the purposes of the duty until it is again so developed or used. Land which is developed within the meaning of sub-s. (2) does not, of course, so revert merely because it is "otherwise used" within the meaning of sub-s. (2), or *vice versa*. And if after the interval the land is again so developed or used, it will cease to be treated as undeveloped land, although it is developed or used in a manner different from that in which it was developed or used before its reversion, provided that it is developed or used within the meaning of sub-s. (2).

The land so reverting will be treated as undeveloped land for the purposes of the duty "on the expiration of one year after the buildings have so become derelict or the land ceases to be so used." The expression here used is "year," and not "financial year," as in sub-s. (1); and therefore it appears that a year of 365 (or 366) days is meant, commencing immediately after the time when the buildings so become derelict or the land ceases to be so used. "On the expiration of" one year means apparently that a whole year must pass before the land can be treated as undeveloped land, cf. *Goldsmiths' Co. v. West Metropolitan Rail. Co.*, [1904] 1 K. B. 1. Upon the assumption that the above view is correct, if the buildings so become derelict, etc., on, say, 25th December in one financial year, undeveloped

land duty is not leviable in respect of the land in that financial year; but if it is not again developed or used before 26th December in the following financial year, the duty becomes leviable in the second financial year. If, however, it is again so developed or used, on, say, the 30th September in the second financial year, it is not liable to duty in the second financial year. There may often be a difficulty in fact, in determining the precise dates upon which the land reverts, and upon which it is again developed. If, on the other hand, "year" in proviso (a) means "financial year," land which reverted to the undeveloped condition on 25th December in one financial year, would not again become liable to the duty, unless it remained in the undeveloped state for the whole of the financial year commencing on the following 1st April; and this hardly appears to be the intention of the proviso. An appeal under s. 33, *infra*, p. 266, appears to lie against the determination of any matters arising under this proviso.

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Expenditure on Roads and Sewers.—The word "owner" in proviso (b) to sub-s. (2) must be read with the definition of the word in s. 41, *infra*, p. 303. A "scheme for land development" apparently means the same thing as the "definite scheme" referred to in s. 17 (3) (c), see notes thereon, *infra*, p. 155.

"Ten years" in this proviso presumably means ten years of 365 (or 366) days commencing immediately after the date of the expenditure, and not ten "financial years." Where the expenditure (as must frequently be the case) has been incurred gradually over a period of time, the "date of the expenditure" is apparently the last date on which expenditure was incurred.

The concluding lines of proviso (b) are not very clear, see example (b), *infra*; they apparently refer, however, to the provision by which the exemption is limited to "one acre for every complete hundred pounds." The roads or sewers upon which the expenditure is incurred need not apparently be situated upon the land in question or be contiguous to it.

Expenditure on anything else than roads or sewers will not be taken into account for the purpose of this proviso; thus expenditure on water-supply or on embankments (though incurred with a view to so developing or using the land) will not be taken into account. "Sewers" are not defined in the Act, but it is suggested that in this proviso the word includes sewers and drains of every description, made for sanitary purposes, except drains as defined in s. 4 of the Public Health Act, 1875, namely, "any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed"; cf. the definition of "sewer" in the same section.

Section 25 (4) (d) *infra*, p. 201, allows deductions from site value in certain circumstances of any part of the value attributable to works; and some of these works may be such as those described in the present proviso, but the two enactments are different in scope. The present proviso confers a total exemption from undeveloped

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land duty which is based on actual expenditure upon certain specified works; while s. 25 (4) (*d*) reduces site value (that is, the value upon which the amount of this duty among others, is to be calculated) by the amount of the value attributable to works of a much larger class, not necessarily by the cost of those works. The effect of s. 25 (4) (*d*) may, in rare cases, be that the whole of the site value is swallowed up by the value attributable to the works, and if so the undeveloped land duty leviable will be *nil*; but the primary object of that provision is not to create a total exemption, but merely to supply a factor in valuation.

An appeal appears to lie under s. 33, *infra*, p. 266, against the determination of any matter arising under the present proviso.

Examples.—(*a*) Fifteen acres of land are included in a scheme of land development; and an expenditure of £1475 on roads and sewers is incurred by the owner with a view to the land being developed or used within the meaning of sub-s. (2). The expenditure is incurred during the years 1910 and 1911, the last date on which it is incurred being March 25th, 1911. The land will be treated as land so developed or used to the extent of fourteen acres thereof; the question which fourteen acres out of the whole fifteen shall be so treated will be determined by the Commissioners. It is submitted that the land will be so treated until March 25th, 1921, inclusive, unless in the meantime it is actually so developed or used and afterwards reverts to the condition of undeveloped land; see example (*c*).

(*b*) Suppose all the facts as in example (*a*); but suppose that the scheme in which the fifteen acres are included covers an area of fifty acres. If the expenditure on roads or sewers has been in the main incurred with a view to so developing or using the fifteen acres, it is submitted that the commissioners must treat as undeveloped land fourteen out of those fifteen acres; and that they cannot, under proviso (*b*), so treat any part of the remaining thirty-five acres.

(*c*) Suppose all the facts as in example (*a*); but suppose that the fifteen acres are developed by the erection of buildings thereon in 1913, but the buildings are abandoned on June 24th, 1917. The land will be treated as undeveloped land on and after June 25th, 1917.

Expenditure compulsorily incurred under statutory provision.—It is submitted that the words "expenditure incurred" are not confined to "expenditure voluntarily incurred," but include expenditure which the owner, etc., has been, or might have been, compelled to incur. If this view is correct, expenses recovered under s. 150 of the Public Health Act, 1875, from an owner within the meaning of the present Act on account of the sewerage, levelling, paving, metalling, flagging, channelling, making good or lighting a street not being a highway repairable by the inhabitants at large would appear to be expenditure on roads or sewers within the meaning of the proviso, if the other requirements of the proviso were fulfilled. So would expenses apportioned under s. 6 of the Private Street Works Act, 1892, for similar works in respect of a street, or part

of a street, if recovered from an owner within the meaning of the present Act. So, too, would be the cost of repairs to a street not being a highway repairable by the inhabitants at large, if recovered from such an owner under the provisions of s. 19 of the Public Health Acts Amendment Act, 1907; and any expenses so recovered under the provisions of local Acts similar to the three provisions in general Acts here referred to. Any expenses paid by such an owner under ss. 22 or 23 of the Public Health Act, 1875, or under s. 18 of the Public Health Acts Amendment Act, 1890, for making or connecting with sewers, and moneys so paid under similar provisions of local Acts would appear, if the other requirements of the proviso are satisfied, to be expenditure on sewers within the meaning of the proviso. Note, however, that in all these cases the expenditure must have been incurred with a view to the land being developed or used within the meaning of sub-s. (2); and that the "owner" for the purposes of the Public Health Acts (Act of 1875, s. 4) is not necessarily the same person as the owner within the meaning of the present Act.

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EXPENDI-
TURE ON
ROADS AND
SEWERS.

17.—(1) Undeveloped land duty shall not be charged in respect of any land where the site value of the land does not exceed fifty pounds per acre.

Exemptions
from un-
developed
land duty and
allowances.

(2) In the case of agricultural land of which the site value exceeds fifty pounds per acre, undeveloped land duty shall only be charged on the amount by which the site value of the land exceeds the value of the land for agricultural purposes.

(3) Undeveloped land duty shall not be charged—

(a) On the site value of any parks, gardens, or open spaces which are open to the public as of right; or

(b) On the site value of any woodlands, parks, gardens, or open spaces reasonable access to which is enjoyed by the public or by the inhabitants of the locality (including access regularly enjoyed by any of the naval or military forces of the Crown for the purpose of training or exercise) where, in the opinion of the Commissioners, that access is of public benefit; or

(c) On the site value of any land where it is shown to the Commissioners that the land is being

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kept free of buildings in pursuance of any definite scheme, whether framed before or after the passing of this Act, for the development of the area of which the land forms part, and where, in the opinion of the Commissioners, it is reasonably necessary in the interests of the public, or in view of the character of the surroundings or neighbourhood, that the land should be so kept free from buildings; or

- (d) On the site value of any land which is bonâ fide used for the purpose of games or other recreation where the Commissioners are satisfied that the land is so used under some agreement with the owner which, as originally made, could not be determined for a period of at least five years, or where, in the opinion of the Commissioners, other circumstances render it probable that the land will continue to be so used.

Where any land kept free from buildings in pursuance of any definite scheme has received the benefit of an exemption from undeveloped land duty by virtue of this section, that land shall not be built upon unless the Local Government Board give their consent, on being satisfied that it is desirable in the interests of the public that the restriction on building should be removed; and any such consent may be given subject to such conditions as to the mode in which the land is to be built upon as the Local Government Board think desirable under the circumstances.

The opinion of the Commissioners as to matters which are expressed to be matters for the opinion of the Commissioners under this subsection shall be final and not subject to any appeal.

(4) Undeveloped land duty shall not be charged on the site value of any land not exceeding an acre in extent occupied together with a dwelling-house or on

the site value of any land being gardens or pleasure grounds so occupied when the site value of the gardens and pleasure grounds together with the site value of the dwelling-house does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as adopted for the purpose of income tax under Schedule A. :

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Provided that the exemption under this provision shall not apply so as to exempt more than five acres, and where the land, gardens, or pleasure grounds occupied together with a dwelling-house exceed five acres in extent, those five acres shall be exempted which are determined by the Commissioners to be most adapted for use as gardens or pleasure grounds in connexion with the dwelling-house.

Where the dwelling-house, gardens, and pleasure grounds are valued for the purpose of income tax under Schedule A., together with other land, the total annual value shall be divided between the dwelling-house, gardens, and pleasure grounds and the other land in such manner as the Commissioners may determine.

(5) Where agricultural land is at the time of the passing of this Act held under a tenancy originally created by a lease or agreement made or entered into before the thirtieth day of April nineteen hundred and nine, undeveloped land duty shall not be charged on the site value of the land during the original term of that lease or agreement while the tenancy continues thereunder. Provided that where the landlord has power to determine the tenancy of the whole or any part of the land, the tenancy of the land or that part of the land shall not be deemed for the purposes of this provision to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy under that power.

Exemptions from Undeveloped Land Duty.—The Crown, not being named, is not liable to this duty in respect of lands owned by it, *vide infra*, p. 230. And it is submitted that this exemption

Sect. 17. extends to servants, and to *quasi*-servants, of the Crown owning lands for the purposes of the Crown (cf. *Coomber v. Berks JJ.* (1883), 9 A. C. 61, *infra*, p. 230). But cases where land so owned is undeveloped land must be rare. In some cases, the persons so owning land will be within the benefit of the exemption created by s. 35, *infra*, p. 277, in favour of rating authorities.

EXEMPTIONS
FROM UNDEVELOPED
LAND DUTY.

The general exemptions from various duties under Part I. of the Act, granted by s. 35, *infra*, p. 277, in favour of rating authorities, s. 37, *infra*, p. 281, in favour of "governing bodies," "registered societies," etc., and s. 38, *infra*, p. 287, in favour of statutory companies, include certain exemptions from undeveloped land duty; in addition, certain total or partial exemptions applying to this duty alone are created by ss. 17 and 18. There is also the exemption granted by s. 16 (2) (b), where certain sums have been spent on roads or sewers. This has been dealt with in the note headed "Expenditure on roads and sewers," *supra*, p. 153. The exemptions granted by s. 17 are discussed in the following notes. Of course, if by reason of the principles of valuation laid down in s. 25 (4) (d), any undeveloped land has no site value in fact, no undeveloped land duty is leviable in respect of it. It is in the Commissioners' discretion what pieces of land are to be separately assessed to duty (s. 29, *infra*, p. 252).

Appeals appear to lie under s. 33, *infra*, p. 266, against the determination of any matters connected with the exemptions created by s. 16 (2) (b), and by s. 17 (1), (2), (4), (5); but in connection with those created by s. 17 (3), the right of appeal is limited by words at the end of that sub-section.

It may in certain cases be necessary in order to obtain the benefit of one or other of these exemptions to apply for an apportionment or reappportionment of original site value under s. 29 (2), *infra*, p. 252.

Where Site Value does not exceed £50 an Acre.—Total exemption from the duty under sub-s. (1). As to how site value is ascertained for this purpose, see note "Site value," *supra*, p. 142. The land in question must be the piece of land separately assessed by the Commissioners under s. 29, *infra*, p. 252, so that it must often be in their discretion whether a particular piece of land is to have the benefit of this exemption or not. See also note to s. 26, *infra*, p. 238.

Agricultural Land.—See definitions in s. 41 of "agricultural land" and "agriculture," *infra*, p. 304. Two different kinds of exemption in respect of agricultural land are created by s. 17, and one by s. 18.

(i) *Exemption in respect of purely agricultural value* under sub-s. (2) of s. 17. The meaning of "value for agricultural purposes" is, no doubt, the value of the land for "agriculture" as defined in s. 41, and is, it is submitted, to be ascertained upon the same principles, as far as possible, as site value under s. 25 (4); cf. also note to s. 7, *supra*, p. 105. The phraseology employed in the present enactment, though different from that employed in s. 7, does not, it is submitted, render inapplicable the

principles above referred to. The "value for agricultural purposes" is to be shown separately, in certain cases, in the valuation made under s. 26; see note thereto, *infra*, p. 231.

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AGRICUL-
TURAL LAND.

Examples.—(a) A piece of land (separately assessed) near a town is used for pasture only, and its value for that agricultural purpose is £60 per acre. It might at the moment of assessment be used as building land, and (taking that consideration into account) the site value of the land as it stands is £100. Undeveloped land duty is only chargeable on £100 less £40, or £60.

(b) A piece of land separately assessed, and used for pasture only, has a site value of £50 per acre. Its value as pasture land is only £40 per acre, but the possibility of its being used for building brings the site value to exactly £50 per acre. By virtue of s. 17 (1) no undeveloped land duty is chargeable.

There may often be considerable difficulty in ascertaining what part of the site value of agricultural land is due to the value of the land for other than agricultural purposes, not only in cases where the land has an additional value for building purposes, but in such cases as those of meadows, pasture grounds or woodlands adjoining a country mansion, and perhaps contributing to its amenities, of land which has water-pipes or sewers running through it, of land over which sporting rights are exercised, of pasture land with a training-track or a golf-links upon it. Regarding such matters, see notes to ss. 7 and 41, pp. 105, 315. Upon these and similar questions it appears that, by virtue of s. 19, the Commissioners will be the judges, subject to appeal, under s. 33, *infra*, p. 266.

(ii) *Agricultural land held under a tenancy created before 30th April, 1909.* If agricultural land is held under a tenancy originally created by a lease or agreement made or entered into before 30th April, 1909, no undeveloped land duty is charged thereon during the original term of that lease or agreement, while the tenancy continues thereunder, subject to the proviso, s. 17 (5). The word "originally" appears to be superfluous, as the exemption only applies "during the original term." As to the meaning of "original term," see the note to s. 14 (2), *supra*, p. 131; and the definition of the "term of a lease" in s. 41, *infra*, p. 302, by virtue of which it includes the period for which a lease may be renewed in pursuance of a covenant in the lease. "Lease" is defined in s. 41, *infra*, p. 302. In the cases where a tenancy of land can be created by a verbal agreement, apparently such an agreement will satisfy the requirements of sub-s. (5). As to the proviso, note that the word "landlord" is used, and not "owner"; "landlord" is not defined in the Act, but apparently means the person who granted the lease or the agreement, or his successor in title. If the site value of the land does not exceed £50 an acre, sub-s. (1) prevents undeveloped land duty from being payable, quite apart from the present provision.

(iii) *The site value of any agricultural land, occupied and cultivated by the owner thereof,* is exempted from undeveloped land duty by s. 18, *infra*, p. 164, if the land of the owner is within the limits of value there specified.

Sect. 17. Parks, etc., open to the Public as of Right.—Parks, gardens, or open spaces open to the public as of right, enjoy a total exemption under sub-s. (3) (a). As to such places, when reasonable access to them is enjoyed (otherwise than of right), see the next note. The words “open to the public as of right” would not, it is submitted, exclude places from which the public may be shut out by the controlling or superintending authority on a limited number of days in the year, as under s. 44 of the Public Health Acts Amendment Act, 1890 (cf. *Manchester Corporation v. Chorlton Assessment Committee* (1899), 15 T. L. R. 327; *Liverpool Corporation v. West Derby Assessment Committee*, [1908] 2 K. B. 647). Where there is merely a right of way through a park, garden, or open space, even though there be an important highway running through it, it cannot, it is submitted, be said that the park, etc., is open to the public as of right. Nor does the phrase appear to include a common, over which the commoners only have rights, although the public, as a matter of fact, wander over it (cf., for instance, the commons discussed in *R. v. Chamberlains of Alnwick* (1839), 9 Ad. & E. 444; *A.-G. v. Meyrick*, [1894] 3 Ch. 209, *supra*, p. 148). It is clear, further, by a comparison with sub-s. (3) (b), that in order to satisfy the provisions of sub-s. (3) (a) the park, etc., must be open to the public at large, and not merely to the inhabitants of the locality. On the whole, then, it does not appear that there can be many parks, etc., which will be covered by the exemption granted by sub-s. (3) (a) other than those of which the owners are also exempted under s. 35 or s. 36, *infra*, pp. 277 *sqq.*

Remarks upon the meaning of “pastures” and “open spaces” are contained in the succeeding note.

The Commissioners are not the final judges of any questions arising under sub-s. (3) (a); an appeal appears to lie against their determination upon any of those questions, under s. 33, *infra*, p. 266.

Woodlands, Parks, etc., to which Reasonable Access is enjoyed.—The total exemption given in respect of woodlands, parks, gardens, and open spaces by sub-s. (3) (b) applies apparently (except as far as woodlands are concerned) only where these are not open to the public as of right; where parks, gardens, and open spaces are so open, their case is provided for by sub-s. 3 (a). As woodlands are not mentioned in sub-s. 3 (a), an exemption only applies to them under the conditions specified in sub-s. 3 (b), even though they are open to the public as of right. Note that in order to establish the exemption under sub-s. (3) (b), there need be no grant (revocable or irrevocable) of any right of access; it is sufficient if access is enjoyed *de facto*. Commons therefore (see the last note) would often be within this exemption; but it would not apply to places where the public or the inhabitants are confined to a mere right of way through woodlands, etc. It is not necessary that the woodlands, etc., should be thrown open to the whole of the public; thus, a landowner who threw his park open only to the inhabitants, say, of a neighbouring town might be within the exemption, if the other conditions were satisfied. The words

"reasonable access" appear to import that access enjoyed at limited times might be deemed sufficient by the Commissioners. There is no appeal from the decision of the Commissioners on the question whether the access enjoyed is to the benefit of the public. But their decision on the question whether land is in fact a woodland, park, garden, or open space, may apparently be the subject of appeal under s. 33, *infra*, p. 266. As to land which cannot be built upon, see the note *supra*, p. 148.

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WOODLANDS,
PARKS, ETC.

Woodlands.—This term would appear to include land upon which a plantation or a wood or underwoods are grown (cf. Rating Act, 1874, 37 & 38 Vict. c. 54, s. 12).

Parks.—A permanent pasture field of thirty acres surrounding a dwelling-house, planted with fruit and other ornamental trees, having unfenced carriage drives to the house running through it, and kept solely for the purpose of enhancing the amenities of the house was held to be a "park" within s. 54 of the Highway Act, 1835, which does not allow digging for road materials in (*inter alia*) a "park" (*R. v. Bradford*, [1908] 1 K. B. 365). Land surrounding a mansion, but separated from it by walls, and used for pasture, was found (by the Devon Quarter Sessions), to be "agricultural land" within the meaning of the Agricultural Rates Act, 1896, s. 9 of which excludes "land occupied together with a house as a park" from the definition of "agricultural land" (*Huish Overseers v. Surveyor of Taxes* (1897), 61 J. P. 487).

Open Spaces.—In the Open Spaces Act, 1906 (6 Edw. 7, c. 25), by s. 20, "open space" is defined to mean "any land, whether inclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied." This definition is not incorporated in the present Act, and there appears to be no reason why its somewhat artificial limit of the part of the space which may be covered by buildings should be applied here. But it may be of some help in indicating broadly what is meant by an "open space"; and it appears to show that a space may still be an "open space" although it is surrounded or divided by fences. A garden in a London square, enclosed by iron railings, was administered under the Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), s. 1 of which contained a definition in some respects similar to that above set out (*St. Mary Islington v. Cobbett*, [1895] 1 Q. B. 369). For the purposes of the Housing, Town Planning, etc., Act, 1909, "the expression 'open space' means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground" (s. 73 (4)).

Land kept free of Buildings in pursuance of a Definite Scheme.—In order to obtain the exemption created by sub-s. (3) (c), the "definite scheme" referred to in the enactment need not, it is submitted, be embodied in a written document, although in practice it may usually be so. It will be best when a scheme complying with the requirements of sub-s. (3) (c) is being framed, to reduce the scheme to writing. "Development" in this enactment

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LAND KEPT
FREE OF
BUILDINGS
IN PURSU-
ANCE OF A
DEFINITE
SCHEME.

appears to refer to the word "developed" in s. 16 (2), and, if this be so, a scheme for the erection upon any land of dwelling-houses, or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), would be such a scheme as is here intended. The enactment appears to have been primarily intended to meet the case of schemes (such, for instance, as those arranged by garden city companies), by which squares, gardens, or other spaces are left free of buildings. Roads left in the course of carrying out the scheme for the use of the inhabitants of, or persons using, the buildings (cf. *Lord Northbrook v. Plumstead Land Co.* (1871), L. R. 7 Q. B. 183) are probably within the benefit of the exemption, if the Commissioners' conditions are satisfied. Roads so left, and dedicated to the public, will become vested in rating authorities, and the exemption created by s. 35, will therefore apply to them.

It is submitted that the "scheme" for the purpose of this provision may be something less definite, and less rigidly binding than a "building scheme" in the sense in which that expression is used in the Chancery Division in connection with implied covenants, e.g. in *Reid v. Bickerstaff*, [1909] 2 Ch. 305; *Willè v. St. John*, [1910] 1 Ch. 84, 325. The reasonable necessity for the land being kept free from buildings must arise *either* "in the interests of the public" *or* "in view of the character of the surroundings or neighbourhood"; it is not necessary that both these considerations should be fulfilled.

As to the meaning of "buildings," see note, p. 144, *supra*.

There is no appeal from the decision of the Commissioners on the question whether it is reasonably necessary that the land should be kept free from buildings. But if the exemption is refused on any other grounds (as, that the land is not being kept free from buildings in pursuance of a definite scheme) an appeal appears to lie under s. 33, *infra*, p. 266.

When once land has received the benefit of an exemption under this provision, that land cannot be built upon, except with the consent of the Local Government Board given as provided in the paragraph following after (d).

Land used for Games or other Recreation.—It has already been submitted, *supra*, p. 151, that in cases where land is hired out to be used for games or other recreation in such a manner that it can be said to be used for a business, etc., that land is free of undeveloped land duty, independently of the provisions of sub-s. (3) (d). As to the meaning of "owner," see s. 41. The agreement referred to in the sub-section may apparently be one for any length of time, provided that as originally made it could not be determined for a period of at least five years; and it would appear that if the original agreement for five years is actually renewed for less than five years, the exemption may still be enjoyed; but this would apparently not be so if a fresh agreement (independent of the first) for less than five years is entered into after the expiration of the first agreement.

As to the meaning of *bonâ fide*, see note *supra*, p. 151.

The decision of the Commissioners is final as to whether circumstances (other than the existence of such an agreement as is described) render it probable that the land will continue to be used *bonâ fide* for purposes of games or other recreation. It appears also that their decision is final on the point whether the land is so used under such an agreement as is described; but it is not quite clear whether the fact that the Commissioners have to be "satisfied" on this matter makes it a matter "expressed to be" for the opinion of the Commissioners under the last paragraph of sub-s. (3). If not, an appeal will lie on this matter under s. 33, *infra*, p. 266.

With the present enactment, compare the provisions of s. 9, *supra*, p. 115.

Land Occupied together with a Dwelling-house.—The phrase, "occupied together with the dwelling-house" occurs also in s. 8 (4) (b). See notes thereon, *supra*, p. 108. Sub-s. (4) of s. 17 creates two exemptions, the first in respect of such land not exceeding one acre, irrespectively of the way in which the land is used, and irrespectively of the value of the land or dwelling-house. It is submitted that the one acre is to be reckoned exclusively of the area actually covered by the dwelling-house.

The second exemption applies to land so occupied being gardens and pleasure-grounds, and is limited to five acres of such land, and is also limited according to annual value. The area covered by the dwelling-house and its out-buildings, etc., is to be excluded in reckoning the five acres; but apparently such of the approaches to the house as can be said to form part of the pleasure-grounds are to be included. Where the land, gardens, or pleasure-grounds so occupied exceed five acres in extent, the Commissioners will determine, upon the considerations stated in the proviso, which five acres shall be exempted. This provision applies apparently where any land exceeding five acres in extent is so occupied, although not more than five acres of that land are gardens or pleasure-grounds.

It is submitted that gardens or pleasure-grounds used in common by the occupiers of a number of dwelling-houses (as, for instance, the garden in *Lady Holland v. Kensington Vestry*, *supra*, p. 148) might be "occupied together with" those houses, and would be within the benefit of this exemption if the other conditions are satisfied. But in no case, apparently, will more than five acres receive the benefit of the exemption; *i.e.* if twenty houses had the use in common of a garden of a hundred acres, only five acres in all would be exempted. As the words "pleasure-grounds" follows upon the word "gardens," it does not appear that the exemption applies to gardens carried on for profit; but gardens used for pleasure would apparently be within the benefit of the exemption, even though the surplus produce were sold; cf. *In re Wallis*, *supra*, p. 150.

The site value of the gardens, pleasure-grounds, and dwelling-house must not exceed twenty-times their annual value as adopted for the purpose of income-tax under Schedule A. As to the

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LAND USED
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 PIED
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meaning of annual value so adopted, see note to s. 8 (1), *supra*, p. 112. The provision for the division of annual value in s. 17 (4) is comparable to that in s. 8 (3), *supra*, p. 107. As to site value for the purposes of undeveloped land duty and of the exemptions therefrom, see p. 140, *supra*.

Example.—A dwelling-house is occupied together with five acres of gardens. The annual value of the dwelling-house and gardens together adopted under Schedule A. is £300. If the site value of the house and gardens together does not exceed twenty times £300, or £6000, no undeveloped land duty is payable. If that site value is, say, £6500, this duty is payable on the site value of the *whole of the gardens*, except so much of the gardens as is freed from duty by the first exemption granted by sub-s. (4).

An appeal appears to lie under s. 33, *infra*, p. 266, against the determination by the Commissioners of any matter arising under this section.

Exemption
 of small
 holdings from
 undeveloped
 land duty.

18.—Undeveloped land duty shall not be charged on the site value of any agricultural land, occupied and cultivated by the owner thereof, where the total value of that land, together with any other land belonging to the same owner, does not exceed five hundred pounds.

For the purposes of this provision the expression “owner” includes a person who holds land under a lease which was originally granted for a term of fifty years or more.

Agricultural Land.—See definition in s. 41, and notes thereon, *infra*, p. 304. For other exemptions of agricultural land from undeveloped land duty, see s. 17 (2) and (5), *supra*, p. 155.

Occupied and Cultivated by the Owner thereof.—The definition of “owner” in s. 41, *infra*, p. 303, is enlarged for the purposes of the present section in the same way as for the purpose of s. 8, *supra*, p. 107; and the phrase quoted appears also in sub-s. (2) of that section; see notes thereon, *supra*, pp. 108, 114.

Site Value—Total Value.—See s. 25 and notes thereon, *infra*, p. 199; and also s. 16 (3), *supra*, p. 140. It would appear that the “total value” must be specially ascertained under this section as at the time to which the exemption, if allowed, will relate, unless indeed that time is so near to the 30th April, 1909, that the total value as shown in the valuation under ss. 26 and 27, *infra*, pp. 229, 240, may be accepted as a criterion for the present purpose.

Appeal.—An appeal appears to lie under s. 33 (1), *infra*, p. 266, against a refusal of the Commissioners to allow the exemption conferred by this section.

19. Undeveloped land duty shall be assessed by the Commissioners and shall be payable at any time after the first day of January of the year for which the duty is charged, and any such duty for the time being unpaid shall be recoverable from the owner of the land for the time being as a debt due to His Majesty, and shall be borne by that owner notwithstanding any contract to the contrary.

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Recovery of undeveloped land duty.

If at any time undeveloped land duty is not assessed within the year for which it is charged, owing to there being no value either shown in the provisional valuation or finally settled on which the duty can be assessed, or for any other reason, the duty may be assessed at any time, and shall be payable at any time after the expiration of two months from the date of the assessment, so, however, that no such duty shall be assessed more than three years after the expiration of the year for which it is charged.

Assessment of Undeveloped Land Duty.—This is to be done by the Commissioners, and this power probably enables them to decide upon all questions relating to the amount of the duty and to exemptions from the duty, *vide supra*, p. 142. Appeals against their decisions will lie under s. 33 (see note on appeals against the amount of the assessment of any duty, *infra*, p. 271), except where the decision is in respect of any of those matters arising under sub-s. 3 of s. 17 upon which the decision of the Commissioners is thereby made final; proviso (b) to s. 33 (1) applies to appeals against the undeveloped land duty when assessed under the present section. Section 29, *infra*, p. 252, enables the Commissioners to assess the duty on or in respect of any such pieces of land as they think fit.

With regard to the second paragraph, as to the meaning of "provisional valuation," and "value finally settled," see s. 27, *infra*, p. 240. It is submitted that the duty under this provision can only be assessed upon the "owner," as defined in s. 41, *infra*, p. 303, who would have been assessable if the duty had been assessed in the year for which it is charged, and perhaps his heirs, executors, etc., but that it cannot be assessed upon a person who has since then become the owner by purchase or by the operation of the definition in s. 41.

Note that s. 19 gives the Commissioners no power for the ascertainment of site value; the site value must have been shown in an original or periodical valuation under ss. 26 and 27 or s. 28, *infra*, pp. 229 *sqq.* or have been determined under the proviso to s. 28, before the duty can be assessed upon it; subject to the provision

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ASSESSMENT
OF UNDE-
VELOPED
LAND DUTY.

Incidence of the Duty.—The duty is recoverable from the owner of the land for the time being. The word “owner” has here the artificial meaning given to it by s. 41, and may therefore in the circumstances there specified mean a lessee. As to copyholds, see s. 40, *infra*, p. 298. It has been submitted, *supra*, p. 141, that “for the time being” means any time between January 2nd and March 31st inclusive in the year of assessment, when the Crown demands the duty. The owner, who is liable if this submission is correct, is the person who at that time satisfies the definition of “owner.” The examples given under the definition, *infra*, p. 314, illustrate the application here suggested. See also the last note, and the note “Financial year,” *supra*, p. 141.

As to exemptions, *vide supra*, p. 142.

The words “notwithstanding any contract to the contrary” appear to apply to any contract, whether it be dated before or after the passing of the present Act (cf. *Wooler v. North-Eastern Breweries*, [1910] 1 K. B. 246, decided upon somewhat similar words in s. 3 (3) of the Licensing Act, 1904 (4 Edw. 7, c. 23). In s. 20 (4), *infra*, p. 168, of the present Act, words to the above effect are expressly enacted.

As the owner cannot, by a covenant in a lease or by any other contract, transfer to a lessee under him the liability to this duty, it follows that the owner is liable for the undeveloped land duty even where the cause of the land remaining undeveloped is the default of his lessee, as in failing to carry out a covenant to build upon the land. Seeing that the Crown can recover the duty from the owner for the time being, and that the vendor or purchaser cannot contract himself out of the liability, it will be well, where any question may arise as to whether the vendor or purchaser of land ought to bear the duty, to add or subtract the amount of the duty for the year to or from the purchase price.

Recovery of the Duty.—The duty is recoverable as “a debt due to His Majesty,” the effect of which, or similar words, has been discussed, *supra*, p. 95. It is payable at any time after the 1st of January of the year for which it is charged (see note “Financial year,” *supra*, p. 141), and is not therefore recoverable until after that date. If for any reason the duty is not assessed within that year, but is assessed at any time not more than three years after the expiration of that year, it becomes payable at any time after the expiration of two months from the date of the assessment. See further upon this provision, *supra*, p. 165. The phrase “after the expiration of” appears to mean that the date of the assessment must be excluded from the two months, and that the whole year for which the duty is payable must be excluded from the three years (*Goldsmiths' Co. v. West Metropolitan Rail. Co.*, [1904] 1 K. B. 1).

There is no provision that the undeveloped land duty shall rank *puri passu* with other debts, and therefore it is submitted that the

Preferential Payments in Bankruptcy Act, 1888, and ss. 107 and 209 (1) (a) of the Companies (Consolidation) Act, 1908, *supra*, p. 96, apply to this duty.

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RECOVERY OF
THE DUTY.

Mineral Rights Duty and Provisions as to Minerals.

20.—(1) There shall be charged, levied, and paid for the financial year ending the thirty-first day of March nineteen hundred and ten and every subsequent financial year on the rental value of all rights to work minerals and of all mineral wayleaves, a duty (in this Act referred to as a mineral rights duty) at the rate in each case of one shilling for every twenty shillings of that rental value.

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rights duty.

(2) The rental value shall be taken to be—

(a) Where the right to work the minerals is the subject of a mining lease, the amount of rent paid by the working lessee in the last working year in respect of that right; and

(b) Where minerals are being worked by the proprietor thereof, the amount which is determined by the Commissioners to be the sum which would have been received as rent by the proprietor in the last working year if the right to work the minerals had been leased to a working lessee for a term and at a rent and on conditions customary in the district, and the minerals had been worked to the same extent and in the same manner as they have been worked by the proprietor in that year: Provided that the Commissioners shall cause a copy of their valuation of such rent to be served on the proprietor; and

(c) In the case of a mineral wayleave, the amount of rent paid by the working lessee in the last working year in respect of the wayleave:

Provided that if in any special case it is shown to the Commissioners that the rent paid by a working lessee exceeds the rent customary in the district, and partly represents a return for expenditure on the part of any

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proprietor of the minerals which would ordinarily have been borne by the lessee, the Commissioners shall substitute as the rental value of the right to work the minerals or the mineral wayleaves, as the case may be, such rent as the Commissioners determine would have been the rent customary in the district if the expenditure had been borne by the lessee.

(3) Every proprietor of any minerals and every person to whom any rent is paid in respect of any right to work minerals or of any mineral wayleave shall, upon notice being given to him by the Commissioners requiring him to give particulars as to the amount received by him in respect of the right or wayleave, as the case may be, and where the proprietor is working the minerals, particulars as to the minerals worked, make a return in the form required by the notice, and within the time, not being less than thirty days, specified in the notice, and in default shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

(4) Mineral rights duty shall be assessed by the Commissioners and shall be payable at any time after the first day of January in the year for which the duty is charged, and any such duty for the time being unpaid shall be recoverable as a debt due to His Majesty from the proprietor of the minerals, where the proprietor is working the minerals, and in any other case from the immediate lessor of the working lessee. As between the immediate lessor and the working lessee, the duty shall be borne by the immediate lessor, notwithstanding any contract to the contrary, whether made before or after the passing of this Act.

(5) Mineral rights duty shall not be charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel.

Financial Year.—This means the twelve months ending the thirty-first day of March, Interpretation Act, 1889, s. 22, see note to s. 16, *supra*, p. 141.

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Minerals.—Part I. of the Act of 1910 contains no definition of minerals. Sub-s. (5) provides that mineral rights duty shall not be charged in respect of "common clay, common brick clay, common brick earth or sand, chalk, limestone, or gravel"; and s. 22 does not apply "to minerals which are exempt from mineral rights duty under this Act," s. 22 (7). These provisions suggest that the substances mentioned are minerals within the meaning of Part I., and that the provisions of s. 23 apply to them. It is proposed, therefore, in the present note to state the effect of certain decisions on the meaning of "minerals" at large, without further reference to the provisions of s. 20 (5) or s. 22 (8). The decisions upon this subject have not all been reconciled by the high judicial authorities who have from time to time reviewed them; and the principles laid down have varied accordingly as the document in which the word "minerals" has had to be interpreted has been a deed, a special Act, or a general Act like the Railways Clauses or the Waterworks Clauses Acts; but the present tendency seems to be to interpret documents of these various classes on the same principles, see the note on "Freestone or sandstone," *infra*, p. 172. In some of these documents the word "minerals" has been accompanied by other words which bear upon its interpretation: *e.g.* the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 77, the Railways Clauses (Scotland) Act, 1845 (8 & 9 Vict. c. 33), s. 70, and the Waterworks Clauses Act, 1847, s. 18, all of which contain the words "mines of coal, ironstone, slate, and other minerals," such being excepted by virtue of these respective sections out of the conveyance of the land to the promoter. In the present Act there are, generally speaking, no such qualifying words appearing in juxtaposition with the word "minerals"; and "It has been laid down that the word 'minerals,' when used in a legal document, must be understood in its widest signification, unless there be something in the context or in the nature of the case to control its meaning. At the same time it cannot be disputed that the term 'minerals' is not unfrequently used in a narrower sense . . . as denoting the contents or products of mines. Nor, indeed, are the authorities all one way in preferring the wider meaning of the word 'minerals'" (*Lord Provost of Glasgow v. Farie* (1888), 13 A. C. 657, *per* Lord MACNAGHTEN, at p. 690; see *Heat v. Gill*, *infra*). It may be added that the wide interpretations referred to have not been given upon taxing Acts like the present; and the fact that this is a taxing Act may induce the courts to put a narrow signification upon the word "minerals" as it stands here. Upon the whole subject, see Bainbridge, *Mines and Minerals*, 5th ed., Chap. I.; MacSwinney, *Mines, Quarries and Minerals*, 3rd ed., Chap. I.

Upon a reservation of "mines and minerals" in a Canal Act, it was said, "Stone is . . . clearly a mineral; and, in fact, everything except the mere surface, which is used for agricultural purposes; anything beyond that, which is useful for any purpose whatever, whether it is gravel, marble, fire-clay, or the like, comes within the word mineral, when there is a reservation of the mines and minerals from a grant of land; every species of stone, whether marble, limestone or ironstone, comes . . . within the same category" (*Midland*

Sect. 20. *Rail. Co. v. Checkley* (1867), L. R. 4 Eq. 19, *per* ROMILLY, M.R., at p. 25).

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In construing a reservation of "mines and minerals" in a grant of a freehold, it was said by MELLISH, L.J., as the result of the authorities, "that a reservation of minerals includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to induce the court to give it a more limited meaning" (*Hext v. Gill* (1872), L. R. 7 Ch. 699, at p. 712). JAMES, L.J. agreed, but said that apart from authority, he "should have thought that what was meant by 'mines and minerals' in such a grant was a question of fact what these words meant in the vernacular of the mining world and commercial world and land-owners" at the period of the grant, *ibid.*, at p. 719.

The definition cited from MELLISH, L.J., in *Hext v. Gill*, has since been followed in dealing with certain reservations in conveyances and leases (*Earl of Jersey v. Neath Guardians* (1889), 22 Q. B. D. 555; *Johnstone v. Crompton & Co.*, [1899] 2 Ch. 190).

The Railways Clauses Act, 1845, ss. 77, 78, and the Waterworks Clauses Act, 1847, s. 18, above referred to, provide for the protection of the surface of the soil (see *Earl of Jersey v. Neath Guardians*, 22 Q. B. D., *per* BOWEN, L.J., at p. 562). Accordingly, the rule in *Hext v. Gill* was not followed in *Lord Provost of Glasgow v. Farie* (1888), 13 A. C. 657, decided under s. 18 of the Waterworks Clauses Act (*diss.* Lord HERSCHELL); but the House of Lords (*diss.* Lord MACNAGHTEN) afterwards took a somewhat wider view in a case decided under ss. 77 and 78 of the Railways Clauses Act (*Midland Rail. Co. v. Robinson* (1889), 15 A. C. 19). As to the actual decision in these two cases, see "Common clay" and "Limestone," *infra*, pp. 171, 172.

In those sections (even though the word "mines" appears in the context) it has been held that the word "minerals" is not confined to substances got by underground working (see the case last cited, and *Midland Rail Co. v. Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552).

The following definition of a mineral has been given in a case arising under the Railways Clauses Act, 1845:—"Any substance that can be got from within the surface of the earth which possesses a value in use, apart from its mere possession of the bulk and weight which makes it occupy so much of the earth's crust. . . . Such materials [as ballast, crushed stone, and earth dug out for the purpose of making embankments] have not a value in use apart from their bulk and weight, and they are only used as being capable of forming a portion of the earth's crust in a new position. On the other hand, everything that has an individual value in use appears to me to be fairly called a mineral. Limestone may vary from a poor quality that is only worth burning into lime up to the very finest Carrara marble; but all those gradations have a value in use, either for building, or statuary, or for the manufacture of lime. Ironstone for the purpose of obtaining the iron, slate for its numerous uses . . . all these things seem to me to be properly called minerals, because from their properties they have a value in

use" (*Great Western Rail. Co. v. Carpalla China Clay Co.*, [1909] 1 Ch. 218, *per* FLETCHER MOULTON, L.J., at p. 231.

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It may now, however, be taken as settled, by the decisions of the House of Lords in the case last cited ([1910] A. C. 83), and in *North British Rail. Co. v. Budhill Coal and Sandstone Co.*, [1910] A. C. 116 (decided upon s. 70 of the Railways Clauses (Scotland) Act, 1845)), that in order to be a mineral within the latter section and within s. 77 of the English Act, a substance must fulfil both the following conditions: (first) it must not be part of the ordinary composition of the soil of the district; its presence must be rare and exceptional (*Great Western Rail. Co. v. Carpalla Co.*, [1910] A. C. at p. 86; *North British Rail. Co. v. Budhill Co.*, [1910] A. C. at pp. 126, 134); (secondly) it must be such that at the time when the purchase of the land was effected it would have been described as a mineral "in the vernacular of the mining world, the commercial world, and landowners;" that is to say, that the parties at the time of the conveyance of the lands to the promoters would have understood the term "minerals" in a reservation of the minerals to include the substance in question (*North British Rail. Co. v. Budhill Co.*, [1910] A. C. at pp. 127-8, 134, following the opinion of Lord HALSBURY, L.C., in *Lord Provost of Glasgow v. Farie* (1888), 13 A. C. 657, at p. 169, *supra*, p. 169, which itself followed the dictum of JAMES, L.J., in *Hext v. Gill* (1872), L. R. 7 Ch. at p. 719, *supra*, p. 170).

Whether the principles which have, as just stated, been pronounced with regard to the interpretation of the Railways Clauses Acts would be applied to the meaning of the word "minerals" in the present Act is a question on which it is not possible to venture a definite opinion. The presence of provisos in s. 20 (5) and s. 22 (8) (*supra*, p. 169) in regard to certain common substances may be held to militate against such an application.

It is clear, however, from the terms of s. 24, *infra*, p. 195, that substances may be "minerals" within the meaning of the present Act, whether they are worked by means of a "colliery, mine, quarry, or open working."

The following substances have been held to be "minerals" within the meaning of various documents:—

CLAY.—*Brick and fireclay* (Railways Clauses Act, 1845, s. 77; *Midland Rail. Co. v. Haunchwood Co.* (1882), 20 Ch. D. 552, *supra*, p. 170), but see "Common clay," *infra*.

Terra cotta clay, under the same Act: this point was not disputed (*Ruabon Brick and Terra Cotta Co. v. Great Western Rail. Co.*, [1893] 1 Ch. 427).

China clay, under the same Act (*Great Western Rail. Co. v. Carpalla Co.*, [1909] 1 Ch. 218; [1910] A. C. 83, *supra*, p. 170); under a reservation in a deed (*Hext v. Gill* (1872), L. R. 7 Ch. 699, *supra*, p. 170).

Brick earth, and clay in a conveyance (*Earl of Jersey v. Neath Guardians* (1889), 22 Q. B. D. 555, *supra*, p. 170).

[*Common clay*, however, forming the surface or underlying the surface, and forming the ordinary soil of the district, is not a mineral

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within the Waterworks Clauses and Railways Clauses Acts (*Lord Provost of Glasgow v. Earle* (1888), 13 A. C. 657, *supra*, p. 170; *Great Western Rail. Co. v. Blades*, [1901] 2 Ch. 624; *In re Todd Birleston and Co.*, [1903] 1 K. B. 603.)

STONE.—*Stone* used for road making and paving, under a reservation in a canal Act (*Midland Rail. Co. v. Checkley* (1867), L. R. 4 Eq. 19, *supra*, p. 169).

Freestone, or sandstone, under a reservation in a conveyance (*Bell v. Wilson* (1866), L. R. 1 Ch. 303). [But in two Scottish cases upon similar reservations, one in a feu-contract, and the other in a contract of excambion, freestone (including sandstone) was held not to be included in the term “minerals” (*Menzies v. Breadalbane (Earl)* (1822), 1 Shaw’s Sc. App. 225; *Hamilton (Duke) v. Bradley* (1841), 3 D. 1121). And these decisions were followed when sandstone was held not to be a mineral within s. 70 of the Railways Clauses (Scotland) Act, 1845 (*North British Rail. Co. v. Budhill Coal and Sandstone Co.*, [1910] A. C. 116, *supra*, p. 171).]

“*Stone fit for building*,” within a reservation in an Inclosure Act (*Rosse (Earl) v. Wainman* (1845), 14 M. & W. 859).

Stone, grindstones, and flagstones, upon an Inclosure Act, in which there was no express reservation of mines and minerals, but the lord had been entitled to these before the passing of the Act (*Micklethwait v. Winter* (1851), 20 L. J. Ex. 313).

Limestone, under the Railways Clauses Acts (*Dixon v. Caledonian Rail. Co.* (1880), 5 A. C. 820 (where there was no appeal on this point to the House of Lords); *Midland Rail. Co. v. Robinson* (1889), 15 A. C. 19). [But limestone quarried from the surface was held not to be within an exception of “mines and minerals” in an agreement for partition, *Darvill v. Roper* (1855), 3 Dr. 294.]

Granite is intended to be classed as a mineral under the present Act (Commons Debates, Official Report, 1909, Vol. 11, col. 1233).

MISCELLANEOUS.—*Redrock and coal* (not available at a profit at the time in question), under a reservation in a lease (*Johnstone v. Crompton*, [1899] 2 Ch. 190, *supra*, p. 170).

Gravel and sand under s. 1 of the Quarries Act, 1894, 57 & 58 Vict. c. 42, s. 1, which speaks of “slate, stone, coprolites, or other minerals” (*Scott v. Midland Rail. Co.*, [1901] 1 Q. B. 317).

Coprolites beneath the surface held to be minerals in a question between copyholder and lord (*Att.-Gen. v. Tomline* (1877), 5 Ch. D. 750).

Mineral Wayleaves—Mining Lease—Rent—Proprietor—Lessor—Immediate Lessor—Lessee—Working Lessee—Minerals being Worked—Working Year—Last Working Year.—All these terms are defined in s. 24, *infra*, p. 193. As to “rent,” “lessor,” and “lessee,” see also s. 41, *infra*, p. 301.

Rental Value.—The rental value of a right to work minerals is determined differently according as the right is the subject of

a mining lease, sub-s. 2 (a), or as the minerals are being worked by the proprietor, sub-s. 2 (b). Under sub-s. 2 (a), in a case where the working year ends on the 30th September (see s. 24, *infra*, p. 194), the rental value for the financial year, for instance, commencing the 1st April, 1910, and ending the 31st March, 1911, will (subject to the proviso to sub-s. (2)) be the amount of the rent (as defined in s. 24, *infra*, p. 193) paid by the working lessee (as there defined) in the year ending 30th September, 1910, in respect of the right to work minerals which is the subject of the lease under which he is working the minerals. Where the right to work the minerals is the subject of a mining lease, there can be no rental value until the first "working year" has been completed during which any "rent" has been paid under that lease, and consequently no duty will be leviable until after such year has been completed, for there is no provision in such a case for the ascertaining of rental value, even if the minerals have been previously worked, either by the proprietor or under another lease. As rent, by the definition referred to, includes "fine, premium, or foregift," it appears that if such fine, etc., has been paid in the "last working year" in question, the whole amount of the fine, etc., will be (subject to the proviso) included in the rental value for the financial year; if the fine, etc., is actually paid in one lump sum, it cannot be spread over a series of years for the purpose of calculating the rental value. If, on the other hand, any payment in the nature of a fine, etc., is by the lease spread over a series of years and is so paid, only the amount actually paid in the last working year is to be included in the rental value for the financial year. Subject again to the proviso, the royalties and dead rent actually paid in the last working year will form the rental value for the financial year, although there may be a "shorts" clause in the lease which allows a deduction in some subsequent year, on account of the dead rent having exceeded the royalties due. See also extracts from the Report of the Royal Commission on Royalties, *infra*, p. 196.

If in any "working year" any "rent" has been paid in respect of the right to work the minerals, a "rental value" may apparently be assessed, and duty collected, in respect of that right, although no minerals have been actually worked in that year. For the definition of "working year" in s. 24 contains no reference to the actual working of minerals.

As to the effect of applying the proviso, see also s. 21 (4), *infra*, p. 177. The proviso appears to apply to all expenditure, a return for which is represented by the rent, and not to be confined to expenditure on boring or sinking shafts. As to the "rent customary in the district," see also the last paragraph of s. 24, *infra*, p. 195.

Examples.—(a) A mining lease is entered into in October, 1909, in consideration of a premium of £1000, which is paid on the grant of the lease, and of royalties at 6d. a ton with a dead rent of £1000. The lease commences on 1st October, 1909. There is a provision for "shorts" in the lease. In the "working year" ending 30th September, 1910, the output on which royalties are payable is 32,000 tons, and the royalties would amount to £800 only. The

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dead rent of £1000 is paid during that year. The rental value in the financial year ending 31st March, 1910, is *nil*, and no mineral rights duty is leviable. The rental value in the financial year ending 31st March, 1911, is £1000 *plus* £1000, or £2000.

- (b) In the "working year" ending 30th September, 1911, the output on which royalties are paid is 60,000 tons. The dead rent of £1000 is paid in that year, together with additional royalties of £300, the shortage of £200 in the previous year being allowed for under the "shorts" clause. The rental value in the financial year ending 31st March, 1912, is £1000 *plus* £300, or £1300.

Minerals worked by the Proprietor.—Under sub-s. 2 (b), the Commissioners are left to estimate the sum which the proprietor, if he had let the right to work the minerals for a term, and at a rent, and on conditions customary in the district, would have received as rent in the last working year for the minerals which he has actually worked in that year in the manner in which he has worked them. A provision for the special circumstances of certain districts is made in the last paragraph of s. 24, *infra*, p. 195. The Commissioners will, in most cases, probably apply to the actual tonnage output of the last working year the usual rates of royalty prevailing in the district for minerals of a similar quality worked in the same manner as the proprietor has worked them.

Where the rental value is ascertained under sub-s. (2) (b), the Commissioners are to cause a copy of their valuation to be served on the proprietor, as defined in s. 24, *infra*, p. 193.

Wayleaves.—The rental value of a mineral wayleave is in every case taken to be the actual "rent" paid therefor by the lessee who was in actual enjoyment of the wayleave (see definitions of "rent" and "working lessee" in s. 24, *infra*, p. 193) in the "last working year" (sub-s. (2) (c)). As to the payments in respect of wayleaves, which are included in "rent" under the definition, see extracts from the Report of the Royal Commission, *infra*, p. 198. The proviso to s. 20 (2) applies to mineral wayleaves as well as to minerals which are the subject of a mining lease.

Returns.—The provisions of sub-s. (3) for requiring returns will, no doubt, enable the Commissioners to ascertain the facts as to the amount of rent paid in the last working year, which may be necessary for the ascertaining of rental value under sub-s. (2) (a) and (c), and the facts as to the output and method of working in the last working year, which may be necessary for the ascertaining of rental value under sub-s. (2) (b).

The return may be required from every proprietor as defined in s. 24, *infra*, p. 193, and from every person receiving "rent" as there defined in respect of any right to work minerals or of any mineral wayleave. The Commissioners have certain powers under s. 31 (1) for ascertaining the names and addresses of persons who receive rent in respect of any land, and these powers, it is submitted, are wide enough to apply to the names and addresses of

the persons to whom any rent within the meaning of the present sub-section is paid.

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The returns must be made in the form required by the notice, and "within the time, not being less than thirty days, specified in the notice." As to the effect of the words quoted, see the note to s. 26 (2), *infra*, p. 239.

Penalty.—In default of making a return, a penalty not exceeding £50 is incurred, sub-s. (3); cf. the somewhat similar provision in s. 26 (2), and note thereto, *infra*, p. 240.

The penalty is recoverable in the High Court, and apparently there only. The provisions of the Inland Revenue Regulation Act, 1890, referred to in the note on "A stamp duty," *supra*, p. 87, appear to apply here. See also the note on "Debt due to the Crown," *supra*, p. 95.

Proceedings cannot, of course, be taken for the penalty before the time at which the return is due.

As to the punishment for knowingly making a false return, see s. 94, *infra*, p. 322.

Assessment of the Duty.—The duty is to be assessed by the Commissioners (sub-s. (4)), and for this purpose they must ascertain the rental value under sub-s. (2) (a) and (c); as well as under sub-s. (2) (b) where they are specifically mentioned. They have also power under the proviso to sub-s. (2) to substitute a sum to be determined by them for the rental value in certain cases. The Commissioners, in ascertaining the rental value, may avail themselves of the powers given them by sub-s. (3) to call for returns, and it is submitted that the powers of inspection by authorised persons given to them by s. 31 (2), *infra*, p. 256, are also available for the purpose of ascertaining rental value under the present section.

It is submitted that the provisions of s. 29 (1), *infra*, p. 252, extend to the mineral rights duty, and that the Commissioners can assess this duty on or in respect of any such parcels of minerals as they shall see fit, subject to the provisions of s. 23 (2), *infra*, p. 188. This matter may have some importance on the ascertaining of rental value when the minerals are being worked by the proprietor.

Appeals.—An appeal against the assessment of duty under the present section is given to any person aggrieved by s. 33 (1), *infra*, p. 266. If the rental value is determined by the Commissioners separately from the assessment of duty, or if the Commissioners, act or refuse to act under the proviso to s. 20 (2), it appears to be open to any person aggrieved to appeal against their determination, under s. 33 (1), apart from any appeal against the assessment of duty; and if this is so, there does not appear to be anything to prevent the question of the amount of rental value being again raised upon an appeal against the assessment of duty.

The proprietor, where he is working the minerals, and in other cases the "immediate lessor," appear to be "persons aggrieved."

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Where the immediate lessor has a right of deduction against his lessor under s. 21, *infra*, p. 177, the latter lessor and any other person from whose rent any deduction is made under that section, would appear to be a "person aggrieved" within the meaning of s. 33 (1),

Incidence of the Duty.—Where the proprietor is working the minerals, the duty is recoverable from him. In any other case the duty falls, in the first instance, upon the immediate lessor of the working lessee; the immediate lessor cannot recover the duty from the working lessee, "notwithstanding any contract to the contrary," sub-s. (4). The immediate lessor has, however, in certain cases, the right to deduct the duty against his own lessor, and so on, under s. 21, *infra*, p. 177. The words, "notwithstanding any contract to the contrary," appear also in s. 19, *supra*, p. 165. It is made clear in the present section that they apply to any contract entered into, whether before or after the imposition of the present duty. The fact that the lessor cannot transfer to his lessee the liability to bear the duty may have the effect of increasing the rent, etc., reserved under future mining leases.

The terms "proprietor," "working lessee," "immediate lessor," are defined in s. 24, *infra*, p. 193.

Recovery of the Duty.—The duty is recoverable from the person specified, as "a debt due to His Majesty"; the effect of these or similar words has been discussed, *supra*, p. 95. It is payable at any time after 1st January in the year for which the duty is charged, see note on "financial year," *supra*, p. 141, and is therefore not recoverable until after that date. The Crown may apparently proceed to recover the duty from any person who was the proprietor, or the immediate lessor, as the case may be, at any time during the financial year, although they cannot take proceedings to recover it from him before the 2nd January in that year, for there is no provision for cases where there is a change of "proprietor," or of "immediate lessor" within the year.

There is no provision that the mineral rights duty shall rank *pari passu* with other debts, and therefore it is submitted that the Preferential Payments in Bankruptcy Act, 1888, and ss. 107 and 209 (1) (a) of the Companies Consolidation Act, 1908, *supra*, p. 96, apply to this duty.

Relief where Increment Value Duty paid.—Where, under s. 22 (1) and (3), *infra*, p. 180, increment value duty is paid in any year in respect of the increment value of minerals which are comprised in a mining lease or are being worked, sub-s. (6) of that section allows relief to that extent from the mineral rights duty payable in that year.

Exception for Certain Minor Minerals.—The exception created by sub-s. (5) is apparently intended to exclude a tax on way-leaves granted in respect of the substance there named (Commons Debates, Official Report, 1909, vol. 11, col. 1232). As to these substances, see note on "Minerals," *supra*. "Limestone" here appears to mean ordinary limestone, and is clearly not intended to

include marble, though the word is used in this sense in the extract quoted at p. 170, *supra*, from *Great Western Rail. Co. v. Carpalla Co.* As to these substances, see also s. 22 (8), *infra*, p. 181.

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MINOR
MINERALS.

21.—(1) Any immediate lessor who under this Act pays any mineral rights duty, and is himself a lessee of the right to work the minerals or of the wayleave in respect of which the duty is paid, shall be entitled to deduct from the rent paid by him in respect of the right to work the minerals or the wayleave, as the case may be, to his lessor a sum equal to the mineral rights duty on a rental value of the same amount as the rent payable; and any person from whose rent any such deduction is made may make a similar deduction from any rent paid by him in respect of the right to work the minerals or in respect of the wayleave, as the case may be.

Deduction
of duty
in case of
intermediate
leases of
minerals.

(2) Any person in receipt of rent from which a deduction may be made under this section shall allow the deduction, and the person making the deduction shall be discharged from the payment of an amount of rent equal to the amount deducted, and any contract for the payment of rent without allowing such a deduction shall be void.

(3) If any person refuses to allow a deduction which he is required to allow under this section he shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

(4) Where in any special case mineral rights duty has been charged on a rental value based on a rent which has been substituted under the provisions of this Act for the rent actually payable by the working lessee, or where in any special case the rental value with reference to which increment value duty is charged has been reduced under the provisions of this Act for the purposes of the collection of that duty, the Commissioners shall, on the application of any lessor from whose rent a deduction may be made in respect of mineral rights duty or increment value duty, as the

Sect. 21. case may be, make a corresponding substitution or reduction as regards that rent, if they consider that the grounds for the substitution or reduction, as the case may be, are applicable in the case of the rent with respect to which the application is made.

Immediate Lessor—Lessee—Lessor—Rent—Wayleave.—

All these terms must be read in accordance with the definitions in s. 24, *infra*, p. 193.

Rental Value.—See s. 20 (2) (a) and (c), *supra*, p. 167. The fact that the rental value in respect of which the duty is levied, in the cases to which the present section applies, is the amount of rent paid in the last working year, gives rise to certain difficulties in the “amount of deduction.” See note so headed, *infra*.

Right to Deduct.—The provisions of the present section appear to be based to a certain extent upon those of the Income Tax Acts, 1842, Sched. A., s. 60, No. IV., Rules Ninth and Tenth, and s. 103; 1853, s. 40.

Note, however, that the right of deduction under the present section is confined to cases where a “rent” as defined in s. 24, *infra*, p. 193, is paid, and that there is no right of deduction in respect of any payment which does not come within that definition, such as a rentcharge, which is expressly excluded.

Note, further, that the right of deduction is not confined to the first payment of rent after the duty is paid. The deduction may apparently be made even before the duty is paid. It can apparently be made against any payment of rent under the “mining lease” that was current in the “working year,” with respect to which the rental value upon which the duty became payable was ascertained under s. 20 (2) (a) or (c).

Examples.—(a) A has a mining lease for a term ending 30th September, 1910; B is his immediate lessor; C is the lessor to B. B is liable in the financial year ending 31st March, 1911, to pay the duty upon a rental value ascertained with reference to the year ending 30th September, 1910 (supposing the “working year” in this case not to have been specially altered by the Commissioners). B can make the deduction against any payment of rent under the lease granted by C, even though the payment is made before the duty is demanded.

(b) B's lease does not end till 30th September, 1950. He can apparently make the deduction in respect of the duty payable for the financial year ending 31st March, 1911, against any payment of rent made under that lease.

As to deductions made before the passing of the Act, see s. 95 (3), (4), *infra*, p. 322.

Amount of Deduction.—The amount which can be deducted is not necessarily the exact amount of the duty on the rental value on

which the duty is or will be assessed, but the amount of the duty calculated upon the amount of the rent as defined in s. 24, *infra*, p. 193, which is paid by the person who makes the deduction to the person against whom the deduction is made. The deduction is not limited to the amount of the duty actually paid. There will be considerable difficulties in applying the provisions on this matter in practice, owing to the absence of such a limitation, and to the fact that, as mentioned in the last note, the deduction is not limited to be made against any particular payment of rent. It is possible, if the section is to be read literally, that the deduction allowable may be either higher or lower than the duty last paid or payable in respect of the amount received by the person against whom the deduction is made. It is submitted, however, that the total of the deductions made against the various payments of rent must not exceed the total amount of the duty for which the person who makes the deduction has become liable during the continuance of the lease, etc., though the section does not expressly provide this.

Sect. 21.**—
AMOUNT OF
DEDUCTION.**

Examples.—(a) A is the working lessee. B is the immediate lessor of the working lessee. C is the lessor to B. The working year ends 30th September. For the year ending 30th September, 1910, B has to pay a rent of £1000 to C. He may deduct from his payment of rent to C 1s. in the £ on £1000, or £50. But A has paid to B in that working year a rent of £1200; and B is liable in the financial year ending 31st March, 1911, to pay a duty amounting to 1s. in the £ on £1200, or £60.

(b) Suppose B did not make any deduction when paying his rent to C for the working year ending 30th September, 1910. The rent due from B to C for the working year ending 30th September, 1911, is only £800. Upon paying that rent, B can deduct only 1s. in the £ on £800, or £40.

(c) Now, suppose that the rent due from B to C for the working year ending 30th September, 1911, instead of being only £800, was £1500. Upon paying that rent B can deduct 1s. in the £ on £1500, or £75.

Penalty.—The penalty imposed by sub-s. (3) on refusal to allow a deduction is “to be recovered in the High Court,” and apparently not otherwise. See note on Penalty in s. 20 (3), *supra*, p. 175.

Deduction in Respect of Increment Value Duty.—See s. 22 (6), *infra*, p. 181.

Provision for Special Cases.—The special cases provided for in sub-s. (4) are those in which a “substitution” has been made under the proviso to s. 20 (2), *supra*, p. 167, or a reduction under s. 22 (4), *infra*, p. 180. An appeal against a refusal of the Commissioners to make such a substitution or reduction and against the amount thereof appears to lie under s. 33 (1), *infra*, p. 266.

22.—(1) No reversion duty shall be charged on the determination of a mining lease, and no increment value

Special provisions as to increment

Sect. 22. duty shall be charged on the occasion of the grant of a mining lease or in respect of minerals which are comprised in a mining lease, or are being worked, except as a duty payable annually in manner provided by this Act.

—
value duty
and reversion
duty in the
case of
minerals
worked or
leased.

(2) Increment value duty shall not be charged in the case of any minerals which were, on the thirtieth day of April nineteen hundred and nine, either comprised in a mining lease or being worked by the proprietor, so long as the minerals are for the time being either comprised in a mining lease, or being worked by the proprietor : Provided that the exemption under this section shall continue to apply in the case of any minerals, although they cease for a temporary period to be comprised in a mining lease or to be worked, so long as the period does not exceed two years.

(3) Increment value duty in respect of the increment value of minerals which are comprised in a mining lease or are being worked shall, where that duty is chargeable, be charged annually ; and the increment value shall, instead of being estimated as a capital sum, be taken to be the sum (if any) by which, in each year during which the lease continues or the minerals are being worked, as the case may be, the rental value on which mineral rights duty is charged in respect of the right to work the minerals exceeds the annual equivalent of the original capital value of the minerals, or the capital value of the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty, if increment value duty has been so collected before the minerals have become comprised in a mining lease or have commenced to be worked ; and the annual equivalent of any such capital value of the minerals shall be taken to be two twenty-fifth parts of that capital value.

(4) If in any case it is shown to the Commissioners that the rental value on which mineral rights duty is charged represents in part a return for money expended

within fifteen years by a lessor in boring or otherwise proving the minerals, the rental value shall be reduced for the purposes of the collection of increment value duty by the amount which represents that return. Sect. 22.
—

(5) Increment value duty payable annually under this section shall, instead of being collected as provided by this Act in other cases, be recoverable in the same manner as mineral rights duty, with the same right of deduction.

(6) Any proprietor or lessor of any minerals who pays increment value duty in pursuance of this provision shall be entitled to be relieved in any year from the payment of mineral rights duty, as such proprietor or lessor, up to the amount paid by him in that year in respect of increment value duty.

For the purposes of this provision a deduction of any amount from the rent payable to a lessor on account of mineral rights duty shall be deemed to be a payment of that duty, and the relief may be given either by allowance or repayment or both of those means, as the occasion may require.

(7) Where minerals cease to be comprised in a mining lease or to be worked within the meaning of this section, the capital value of the minerals at the time shall be specially ascertained in accordance with the provisions of this Act, and the capital value as so ascertained shall be treated as the original capital value of the minerals.

(8) Nothing in this section shall apply to minerals which are exempt from mineral rights duty under this Act.

Minerals.—As to the meaning of this term, see note, *supra*, p. 169. By sub-s. (8), common clay, common brick clay, common brick earth, sand, chalk, limestone, and gravel are excluded from the scope of s. 22, see s. 20 (5), *supra*, p. 168. As to these substances, see note on “Minerals not comprised in a mining lease and not being worked,” *infra*, p. 187.

Mining Lease—Minerals comprised in a Mining Lease—Minerals being worked—Proprietor—Lessor—Lessee.—These terms are defined in s. 24, *infra*, p. 193.

Sect. 22. **Rental Value.**—See s. 20 (2) (a), (b), (c), *supra*, p. 167.

Capital Value of the Minerals.—See s. 23, and notes thereon, *infra*, p. 189.

Reversion Duty.—The reversion duty levied under s. 13, *supra*, p. 122, is not to be charged on the determination of a “mining lease” as defined in s. 24, *infra*, p. 194.

Increment Value Duty.—Increment value duty is chargeable under s. 1 (a), (b), and (c), *supra*, p. 59. For the purposes of this duty, minerals within the scope of s. 22 (see “Minerals,” *supra*) are divided by it into three classes, which are discussed separately in respect to increment value duty in the ensuing notes:—

(i) Any such minerals which were on the 30th April, 1909, comprised in a mining lease or being worked: these are freed by sub-s. (2) from the increment value duty upon any of the occasions on which this duty is charged, subject to certain limitations which will be discussed, *infra*.

(ii) Any such minerals in respect of which a mining lease is granted, or which are comprised in a mining lease, or are being worked, other than minerals within the benefit of the exemption created by sub-s. (2). Where the minerals come within the above description, the increment value duty chargeable upon the grant of a mining lease, or upon the sale of minerals or of an interest in minerals (s. 1 (a)), or upon minerals or an interest in them being property passing on death within the meaning of s. 1 (b), or upon any of the periodical occasions specified in s. 1 (c) in respect of minerals or any interest in minerals, is to be levied as a duty payable annually under sub-ss. (1), (3), and (5) of the present section.

(iii) Minerals not within the benefit of sub-s. (2), and not comprised in a mining lease, or not being worked, within the meaning of sub-s. (1). In respect of minerals of this class, the increment value duty will be levied under s. 1 (a), (b), (c), and the provisions of ss. 2-12 inclusive, *supra*, pp. 76-122, irrespectively of the present section.

It is submitted, *infra*, p. 291, that the effect of s. 38 (1) is to exempt “statutory companies” as defined in that section from increment value duty in respect of certain minerals held by them.

Minerals Leased or Worked on 30th April, 1909.—Where any minerals within the scope of the present section were “comprised in a mining lease” or “being worked” within the meaning of s. 24, *infra*, p. 195, on the 30th April, 1909, no increment value duty is chargeable in the case of those minerals while they continue to be comprised in a mining lease, or to be worked by the proprietor (sub-s. (2)). And the effect of the proviso appears to be that the exemption will continue, in practically every case, for two years after the minerals have ceased to be comprised in a mining lease, or to be so worked. For where there is any value left in the minerals, their ceasing to be comprised in a mining lease, or to be worked, will usually be for a temporary period only.

Note that by the definition in s. 24, *infra*, p. 195, minerals which

are being worked under the terms of a mining lease are still deemed to be comprised in such a lease, although the lease has expired.

It appears to be the intention of the legislature that the proviso to s. 22 (2) should cover a case where a mining lease has expired, and a fresh mining lease in respect of the same minerals is granted within a period of two years after the expiration of the old lease; and that no increment value duty will be levied in respect of those minerals which were comprised in the old lease, so long as they are comprised in the new lease, or for two years after they cease to be so comprised. And further, that the proviso should cover a case where a mining lease has expired, and where the proprietor commences to work the minerals comprised in the old lease within a period of two years after the expiration of the old lease; so that no increment value duty will be levied in respect of those minerals, so long as they are worked by the proprietor and for two years after they cease to be so worked (Commons Debates, Official Report, 1909, Vol. 11, cols. 1314-1322). It may be doubted, however, whether that intention has been expressed with great clearness. At any rate, there does not appear to be anything limiting the continuance of the exemption, if a fresh lease is granted within the two years, to a fresh lease granted to the same person who was the lessee under the old lease.

If the period of two years granted by the proviso expires without either a new lease being granted or the minerals being worked by the proprietor, increment value duty becomes leviable in respect of the minerals (on the next occasion on which increment value duty is to be collected) under the provisions of ss. 1, 2 *et seq.* And if, after that period, the minerals are again comprised in a mining lease or again being worked, increment value duty will be leviable in respect of them under sub-ss. (1) and (3) of the present section. In the latter case (and apparently in the former case also) the capital value ascertained under sub-s. (7) will be treated as the original capital value of the minerals.

As, by s. 23 (3), the provisions as to valuation do not apply to minerals which were comprised in a mining lease, or being worked by the proprietor, on 30th April, 1909, there will be no valuation of such minerals previous to the special valuation (if any) made under s. 22 (7).

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MINERALS
LEASED OR
WORKED ON
30TH APRIL,
1909.

Minerals comprised in a Mining Lease or being worked.

—On the occasion of the grant of a mining lease of any minerals within the scope of the present section, or in respect of any such minerals which are comprised in a mining lease or are being worked (unless these come within the exemption granted by sub-s. (2), see last note), the increment value duty is levied as a duty payable annually under sub-ss. (1), (3) and (4). “Annually” apparently means “in each financial year.” See note on “financial year,” *supra*, p. 141.

Increment Value.—The duty in this case is charged upon an increment value as defined in sub-s. (3). This increment value is not to be estimated as a capital sum, as is the case with the increment value ascertained under s. 2, *supra*, p. 76. It is ascertained separately in each year during which the lease continues or

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MINERALS
COMPRISED IN
A MINING
LEASE OR
BEING
WORKED.

minerals are being worked. The year in question is apparently the financial year; see note, *supra*, p. 141. In ascertaining the increment value, either the original capital value is taken, or the capital value on the last preceding occasion on which increment value duty has been collected. The meaning of these terms will be discussed *infra*. An "annual equivalent" of such original capital value, or capital value, as the case may be, is then calculated by taking two twenty-fifth parts thereof, the reason being that the original capital value or capital value of minerals is assumed to be estimated at twelve and a half years' purchase. The annual equivalent so calculated is then deducted from the rental value on which mineral rights duty is charged under the provisions of s. 20, see note, *supra*, p. 172. The result of this deduction is the increment value. The rental value here meant is apparently the rental value on which mineral rights duty is charged in the same financial year as that for which increment value duty is charged under sub-s. (3) of the present section, and the actual sum upon which the duty is charged is taken; there is no fresh ascertainment of rental value for the purposes of the present section. But in the cases provided for by s. 22 (4), upon proof to the Commissioners of the facts there specified, a reduction will be made for the present purpose in the rental value. Where a substitution has been made for the rental value, under s. 20 (2) proviso, that substitution will apply for the present purpose also.

"Original capital value" means primarily the capital value of the minerals as shown in the valuation made under s. 26, *infra*, p. 229, when finally settled under s. 27, *infra*, p. 240; and see s. 23 and note "Valuation" thereunder, *infra*, p. 190. If no capital value is shown in that valuation as finally settled, the original capital value will be *nil*. But when the capital value of the minerals has been specially ascertained under sub-s. (7) of the present section, that value is to be treated as the original capital value of the minerals.

The provisions of s. 29 (2), *infra*, p. 252, as to apportionments and reapportionments of original site value appear to apply to the original capital value of minerals, and it may sometimes be necessary or desirable that the original capital value should be apportioned for the purpose of calculating increment value under the present provision. Section 29 appears to apply to the original capital value, whether ascertained under s. 23 (2), or under s. 22 (7).

The phrase "on the last preceding occasion on which increment value duty has been collected" refers to the occasion on which increment value duty has been collected under s. 1 (a), (b) or (c), *supra*, p. 59, in respect of minerals before they have been comprised in a mining lease or have commenced to be worked. If, therefore, such minerals have (before such time) been sold, or have been included in property passing on death, and increment value duty has been paid thereon, the capital value of the minerals on the occasion on which such duty has been collected will be used for the purpose of calculating the "annual equivalent" by the process above described, and not their original capital value. It would appear, however, that this can only be done where the capital value of the minerals, on the occasion on which the increment value duty has been collected, has been ascertained separately from the capital

value of the land; see note on "Minerals not comprised in a mining lease and not being worked," *infra*, p. 187.

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MINERALS
COMPRISED IN
A MINING
LEASE OR
BEING
WORKED.

Examples.—(a) The capital value of certain minerals of which A is the proprietor, as shown in the valuation made under s. 26 and finally settled, is *nil*. A lets the right to work the minerals from 1st October, 1912, or works them himself from that date. If there is no rental value in the financial year ending 31st March, 1913, A has no increment value duty to pay.

(b) The rental value on which mineral rights duty is charged in the financial year ending 31st March, 1914, is £1000. The original capital value being *nil*, the increment value is £1000. A has to pay increment value duty in that financial year on £1000.

(c) The original capital value of certain other minerals, of which B is the proprietor, is £12,500. The annual equivalent is two twenty-fifths of that sum, or £1000. B lets the right to work the minerals, or works them himself. The rental value on which the mineral rights duty is charged in the financial year ending 31st March, 1911, is £1000. The increment value is £1000 less £1000 or *nil*. B has no increment value duty to pay in that financial year.

(d) The rental value on which the mineral rights duty is charged in the financial year ending 31st March, 1912, in respect of the minerals supposed in the last example is £2500. The increment value is £2500 less £1000, or £1500, and B has to pay increment value duty in that financial year on £1500.

(e) Certain minerals not comprised in a mining lease and not being worked are shown in the valuation made under s. 26 and finally settled, at an original capital value of *nil*. In the year 1911 these minerals are the subject of a transfer on sale, and increment value duty is collected on that occasion; the capital value of the minerals on that occasion is £25,000. The annual equivalent is two twenty-fifths of that sum, or £2000. The minerals afterwards become comprised in a mining lease, or commence to be worked. In the financial year ending 31st March, 1913, the rental value on which mineral rights duty is charged in respect of these minerals is £3000. The increment value is £3000 less £2000, or £1000. The proprietor has to pay increment value duty in that financial year on £1000.

(f) See example on p. 255, *infra*, where the original capital value is apportioned.

Assessment.—The increment value for the purposes of the annual duty will presumably be ascertained by the Commissioners, and the duty payable assessed by them, although there is no express provision to this effect in the present section. Section 3 (1), *supra*, p. 83, appears to give them this power, but the words in that sub-section "after giving credit for the amount of duty paid on previous occasions" appear to have no application here. Nor do the other sub-ss. of s. 3 appear to apply. It is submitted that

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MINERALS
COMPRISED IN
A MINING
LEASE OR
BEING
WORKED.

the provisions of s. 29 (1), *infra*, p. 252, apply to this annual duty, so that the Commissioners can assess the duty on or in respect of any such parcels of minerals as they see fit, but subject to the provisions of s. 23 (2), *infra*, p. 188.

Appeals.—Any person aggrieved may appeal under s. 33 (1), *infra*, p. 266, against any assessment of duty under the present section. Appeals with regard to “original capital value” are dealt with *infra*, p. 192, and those with regard to “rental value,” *supra*, p. 175. There would appear also to be an appeal under s. 33 (1) against any determination of increment value under sub-s. (3) of the present section; but apparently no question relating to original capital value can be raised upon such an appeal, s. 33 (1), proviso (b). An appeal appears to lie under s. 33 (1) against a refusal to make the reduction provided for in s. 22 (4) or against the making of an insufficient reduction.

Recovery.—The duty leviable annually under s. 22 (1) and (3) is to be recovered according to the provisions of sub-s. (4) of s. 20, *supra*, p. 168; see notes, p. 176.

Incidence.—By virtue of s. 22 (5), read with sub-s. (4) of s. 20, *supra*, p. 168, the duty is recoverable from the proprietor of the minerals, where the proprietor is working the minerals, and in any other case, from the immediate lessor. “Proprietor” and “Immediate lessor” are defined in s. 24, *infra*, p. 193. The right of deduction here referred to is created by s. 21, *supra*, p. 177; note the provisions of s. 21 (4). It is submitted that the provision in sub-s. (4) of s. 20, that, as between the immediate lessor and the working lessee, the duty must in any case be borne by the immediate lessor, is not applied to the duty now under consideration by sub-s. (3) of the present section. If this view is correct, the immediate lessor may, if there is a contract to that effect made before or after the passing of this Act, recoup himself against his lessee for the amount of the duty paid by him under the present section. It must be admitted, however, that the fact that the lessor is given by sub-s. (5) of the present section, read with s. 21, *supra*, p. 193, a right of deduction against his superior lessor, and so on, somewhat militates against this view.

A provision for charging increment value duty upon settled land and land vested in a trustee, in certain cases, is contained in s. 39, *infra*, p. 293.

Relief against Mineral Rights Duty.—Sub-s. (6) contains a provision for relieving a lessor who pays increment value duty under the present section from an equivalent amount of mineral rights duty paid by him in the same year, which apparently means “financial year,” *vide supra*, p. 183. Presumably the two duties must have become payable in respect of the same minerals if this relief is to be obtained. Any deduction made against such lessor by his lessee in respect of mineral rights duty under s. 21, *supra*, p. 177, is to be deemed for this purpose to be a payment of that duty.

An appeal would appear to lie under s. 33 (1), *infra*, p. 266, against a refusal of the Commissioners to make an allowance or repayment under this provision.

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Minerals not comprised in a Mining Lease and not being worked.—Where such minerals are not within the exemption contained in sub-s. (2), as extended by the proviso thereto, increment value duty will be levied in respect of them on any of the occasions specified in s. 1 (a), (b), (c), and the provisions of s. 2, *supra*, p. 76, will apply to the ascertainment of the increment value of the minerals. By virtue of s. 23 (4), *infra*, p. 189, references to the site value of land in s. 2 will be construed, so far as respects the minerals, as references to the capital value of the minerals. The increment value under s. 2 will therefore be the difference between the original capital value of the minerals and the capital value of the minerals on the occasion on which increment value duty is to be collected. The “original capital value” for this purpose will be either that ascertained in accordance with s. 23, *infra*, p. 188; or, if the capital value has been specially ascertained under sub-s. (7) of the present section, the capital value so ascertained. The “capital value on the occasion, etc.,” will be calculated on the principles which are laid down, for the various occasions dealt with, in s. 2 (2) (a), (b), (c), and (d) respectively, for the ascertaining of the site value of the land on such an occasion. There appears to be no provision for ascertaining the capital value of the minerals on any such occasion separately from the site value of the land; but this will no doubt often have to be done in practice.

The increment value duty in respect of the minerals dealt with in this note will be assessed, collected and recovered according to the provisions of ss. 1-6, *supra*, pp. 59 *sqq.*, and s. 29, *infra*, p. 252. What is said in this note (except as to s. 22 (7)) appears to apply to the minerals referred to in s. 20 (5) and s. 22 (8), even if they are comprised in a mining lease, or are being worked. But if such minerals are, on 30th April, 1909, comprised in a mining lease or being worked, they would appear to be in fact relieved from increment value duty (although not within the exemption created by s. 22 (2)), because by virtue of s. 23 (3), *infra*, p. 188, no valuation will be made of such minerals so long as they are for the time being comprised in a mining lease, or being worked by the proprietor.

Special Ascertainment of Capital Value.—Where minerals cease to be comprised in a mining lease or to be worked, within the scope and meaning of the present section, their capital value is to be specially ascertained (sub-s. (7)). Owing to the provisions of s. 23 (3), *infra*, p. 188, their capital value will not have been previously ascertained. It is submitted that the proviso to sub-s. (2) is not to be read into sub-s. (7), and that the value may be specially ascertained, even within the period of two years after the minerals have ceased to be comprised in a mining lease or to be worked by the proprietor. The capital value will be ascertained upon the principles laid down in s. 23 (1), *infra*, p. 188. When ascertained, it will be treated as the original capital value for the purposes of sub-s. (3), when the minerals again come to be comprised as a mining lease, or to be worked; as well as for the purposes of s. 2 (1), *supra*, p. 76, on any occasion on which increment value duty becomes due in respect of the minerals, not being comprised in a mining lease and not being worked. See last note.

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SPECIAL
ASCERTAIN-
MENT OF
CAPITAL
VALUE.

An appeal appears to lie against the capital value so specially ascertained, under s. 33 (1). *infra*, p. 266; and it is submitted that proviso (b) will apply, and that the capital value so ascertained can only be questioned on such an appeal, and not on an appeal against any assessment of duty.

Application of
provisions as
to total and
site value to
minerals.

23.—(1) For the purposes of this part of this Act, the total value of minerals means the amount which the fee simple of the minerals, if sold in the open market by a willing seller in their then condition, might be expected to realise, and the capital value of minerals means the total value, after allowing such deduction (if any) as the Commissioners may allow for any works executed or expenditure of a capital nature incurred *bonâ fide* by or on behalf of any person interested in the minerals for the purpose of bringing the minerals into working, or where the minerals have been partly worked, such deduction as is, in the opinion of the Commissioners, proportionate to the amount of minerals which have not been worked.

(2) For the purposes of valuation under this part of this Act, all minerals shall be treated as a separate parcel of land; but where the minerals are not comprised in a mining lease or being worked, they shall be treated as having no value as minerals, unless the proprietor of the minerals, in his return furnished to the Commissioners, specifies the nature of the minerals and his estimate of their capital value.

Minerals which are comprised in a mining lease or are being worked shall be treated as a separate parcel of land, not only for the purposes of valuation, but also for the purpose of the assessment of duty under this Part of this Act.

(3) The provisions of this Part of this Act with respect to valuation shall not apply to minerals which were, on the thirtieth day of April, nineteen hundred and nine, either comprised in a mining lease or being worked by the proprietor, so long as they are for the time being either comprised in a mining lease or being worked by the proprietor, nor shall such provisions

apply to any minerals which cease for a temporary period to be comprised in a mining lease or to be worked so long as the period does not exceed two years. Sect. 23.

(4) Except where the context otherwise requires, any references in this Part of this Act to the site value of land shall, in cases where the land consists solely of minerals, or comprises minerals, be construed, so far as respects the minerals, as a reference to the capital value of the minerals.

Minerals.—As to the meaning of this term, see notes to s. 20, *supra*, p. 169. In the present section, the term apparently includes those substances which are referred to in s. 20 (5) and s. 22 (8), *supra*, pp. 168, 181.

Total Value of Minerals.—The purposes for which the sum designated the “total value of land” is used in the operative parts of the Act are summarised, *infra*, p. 220.

It is submitted that, as “land” includes minerals, those references apply also, to the total value of minerals; see note on s. 13 (2), *supra*, p. 127.

Owing to the provisions of s. 22 as to increment value duty and reversion duty in respect of minerals, the total value of minerals will (even if the above view is correct) not be of much importance in connection with some of these references. But the total value of the minerals will apparently have to be shown in the valuation made under s. 26 in cases where the minerals are shown at all in that valuation, see s. 23 (2), (3). However, the chief importance of the total value of the minerals lies, no doubt, in the fact that the “capital value of minerals” is to be ascertained, under the present section, by making a deduction therefrom.

“Fee simple” is defined in s. 41.

The phrase “if sold in the open market by a willing seller in their then condition” is very similar to that used in defining the “gross value of land” in s. 25 (1) where it has been fully discussed, see notes, p. 203, and pp. 204-216. It is true that the words “at the time” do not appear in the present section; but it is submitted that the omission is immaterial, and that the principles suggested in the note headed “at the time,” p. 205, *infra*, apply to the valuation of minerals. The occasions with regard to which the total value and site value of land have to be ascertained are mentioned in that note; the capital value of minerals also may have to be ascertained with regard to the occasions specified in s. 22 (3) and (7), *supra*, p. 180. And the total value will have to be ascertained with regard to any occasion with regard to which the capital value has to be ascertained, because, as has been already pointed out, capital value is ascertained by first ascertaining the total value, and then making a deduction therefrom.

Capital Value of Minerals.—The capital value of minerals,

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MINERALS.

under the present section, is arrived at from the total value, by making a deduction (if any) for the matters specified in sub-s. (1). The propriety of making any deduction, and the amount of the deduction, are matters for the determination of the Commissioners. If the minerals have been partly worked, the deduction will be proportionate to the amount of minerals which have not been worked. As to the meaning of minerals which have or have not been worked, see s. 22, *supra*, p. 182, and s. 24, *infra*, p. 195.

The words "works executed or expenditure of a capital nature incurred *bonâ fide* by or on behalf of any person interested" appear also in s. 25 (4) (b), and are discussed in the notes at pp. 224, 225. In the present section, the works must have been executed, or the expenditure incurred, for the purpose of bringing the minerals into working. The most obvious matters of deduction would appear to be the making of bores and the sinking of pits or shafts (cf. *Coltness Iron Co. v. Black* (1881), 6 A. C. 315), and the erection of buildings and machinery (cf. *Addie v. Inland Revenue* (1875), 12 Sc. L. R. 274; 1 Tax C. 1). It is submitted that the works may have been executed, or the expenditure incurred, on land other than that which comprises the minerals, provided the purpose of the works or expenditure has been to bring the minerals into working. If this is so, a deduction may be allowed for the laying down of a tram-line or railway siding, and even of those parts of it which are outside the land containing the minerals.

The principle upon which the amount of deduction is to be assessed is left at large.

The "original capital value" of minerals is the capital value ascertained on the principles above described, when adopted in the course of the valuation made and settled under ss. 26 and 27, see note on references to site value, *infra*; or the capital value specially ascertained under s. 22 (7), *supra*, p. 181, as the case may be. As to the use to which the "original capital value" is put for the purposes of taxation, see s. 22 and notes thereto.

The "capital value" of minerals on the occasion on which increment value duty is collected means, it should be noted, not the capital value ascertained as above, but the capital value of the minerals ascertained upon the principles laid down in s. 2 (2) for the ascertaining of the site value of land on the occasion on which increment value duty is to be collected, which are applied to minerals by sub-s. (4) of the present section. See note to s. 22, *supra*, p. 187.

Valuation: Returns.—The valuation referred to in sub-s. (2) is that provided for by s. 26, and to be finally settled under s. 27, *infra*, pp. 229, 241. See note headed "minerals" under s. 26, *infra*, p. 239. It will be seen from s. 22 (3), *supra*, p. 180, and from the notes and examples thereto at pp. 184, 185, that it may be advisable in certain cases, where the minerals are not comprised in a mining lease or being worked, for the proprietor to make a return specifying the nature of the minerals and his estimate of their capital value, so that the capital value as shown in the provisional valuation and as finally settled, may not be *nil*. If it is shown as *nil*, the increment value ascertained under s. 22 (3) will be by so much the greater.

In any case it will be to the proprietor's interest for the purpose referred to, to have the original capital value of minerals as high as possible, in order to keep that increment value as low as possible. No duty under Part I of this Act is levied directly on the capital value of minerals. A high valuation of the minerals may possibly, however, operate to the prejudice of the proprietor when death duties under the Finance Act, 1894, have to be paid in respect of the minerals.

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VALUATION :
RETURNS.

The word "proprietor" is defined in s. 24, *infra*, p. 193; if in any case the "proprietor" as so defined is a different person from the "owner" as defined in s. 41, *infra*, p. 303, it is difficult to see how the interests of the latter are to be safeguarded. From s. 23 (2) it may be gathered that it is intended in the case of minerals that the returns which the Commissioners are authorised under s. 26 (2) to require are to be required from the "proprietor," as defined in s. 24, and not from the "owner."

Minerals, whether they are comprised in a mining lease or not, and whether they are being worked or not, are (by virtue of sub-s. (2) of the present section) to be treated as a separate parcel of land in the valuation to be made under s. 26. The operation of this provision may give rise to considerable difficulties in practice, especially where the surface of the land is held or occupied under the same title as the minerals. But if the minerals were on 30th April, 1909, comprised in a mining lease or being worked by the proprietor they will by virtue of sub-s. (3) not be shown at all in the valuation made under s. 26, unless they cease to be so comprised or worked for a period exceeding two years, and that period elapses before the valuation is made. Sub-s. (3) was apparently inserted to correspond with s. 22 (2), but appears to have a wider scope; for those substances which by s. 22 (8) are excluded from the purview of s. 22, appear to be within the purview of s. 23.

Where any value is shown for the minerals in the valuation made under s. 26, it is submitted that their total value should be shown as well as their capital value, if the view above expressed is correct that references to the total value of land apply to the total value of minerals.

A question of some difficulty arises as to the time with respect to which the question whether minerals are comprised in a mining lease or being worked is to be ascertained, for the purpose of deciding how the provisions of s. 23 (2) are to be applied to them in the valuation to be made under s. 26. It is submitted that this question should be decided with reference to 30th April, 1909, that being the date with respect to which the value is to be estimated in the valuation, by virtue of s. 26 (1), *infra*, p. 229. But it may be that the question should be decided with reference to the date on which the returns required under s. 26 (2) are furnished, or are required by the Commissioners to be furnished; or even with reference to the date upon which some one of the various stages through which the valuation has to pass under s. 27, before it is finally settled.

As to the record of valuations made, or deductions allowed by the Commissioners, see s. 30, *infra*, p. 255.

Sect. 23. **Assessment of Duty.**—Minerals which are comprised in a mining lease, or are being worked, are to be treated as a separate parcel of land for the purpose of assessment of duty (sub-s. (2)), unless where they are excepted from the valuation by sub-s. (3). In the case of such minerals, the powers given to the Commissioners by s. 29 must apparently be exercised subject to this provision. The duties referred to are the mineral rights duty (s. 20, *supra*, p. 167), and the increment value duty, whether assessed according to the provisions of s. 22, *supra*, p. 179, or under those of ss. 1 and 2, *supra*, pp. 59, 76. See note at p. 182.

Appeals.—Where any total value or capital value is shown for minerals in the valuation to be made under s. 26, the determination of such value may be questioned upon appeal in the same way as that of the total value or site value of any land, s. 33, *infra*, p. 266; see note on “References to the site value of land,” *infra*, p. 192. But provisos (a) and (b) to s. 33 (1), will apply, so that only a person who has made an objection to the provisional valuation (see s. 27, and notes thereto, *infra*, pp. 240, 245) can appeal, and so that the original total value and the original site value of minerals can be questioned only by means of an appeal against the provisional valuation. Proviso (b) appears to apply to appeals against the determination of the capital value of minerals when specially ascertained under sub-s. (7) of s. 22; if so, the value so ascertained can be questioned only upon an appeal against such determination, and not on an appeal against any assessment of duty.

A refusal to treat minerals which are comprised in a mining lease, or are being worked, as a separate parcel of land for the purpose of the assessment of duty, would probably be the proper subject of an appeal “against the amount of an assessment of duty” under s. 33 (1). And any apportionment of total value or capital value might be appealed against under the words “against any apportionment of the value of land” in s. 33 (1).

References to the Site Value of Land.—The following appear to be references in the Act to the site value of land which are under sub-s. (4) to be construed, when necessary, as references to the capital value of minerals:—

References in s. 2 and s. 3 (5), *supra*, pp. 76, 84, to the “site value of the land on the occasion on which increment value duty is to be collected,” and to the “original site value of the land.” These references are, however, only of importance as regards minerals which are not comprised in a mining lease or being worked, and which are not within the exemption created by s. 22 (2), *supra*, p. 180; because the increment value duty in respect of other minerals is not charged according to the provisions of s. 2, but according to those of s. 22 (3), *supra*, p. 180.

Section 12, *supra*, p. 121, appears to apply to claims for deductions in ascertaining the site value of minerals.

References to the site value in s. 26 (1), *infra*, p. 229, as regards the valuation to be made under that section, and to the site value of the land in s. 26 (3), as to the estimate furnished by the owner. Section 26 must, however, as regards minerals, be read in the light

of sub-s. (2) of the present section. See note headed "Valuation," *supra*.

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References in s. 27, *infra*, p. 240, to "the site value" as stated in any provisional valuation, and to the "original site value"; thus the capital value of minerals as shown in the provisional valuation made under s. 26, will be "adopted" or "finally settled" in the same manner as is provided in s. 27 with reference to the site value of land, see notes on this procedure, *infra*, pp. 242 *sqq.* When so "adopted" or "finally settled," the capital value of minerals will be called the "original capital value," by which name it is referred to in s. 22 (3), *supra*, p. 180.

References in s. 29 (2), (3), and (4), *infra*, p. 252, concerning apportionment, etc., of any original site value.

References in s. 33 (1) (appeals) to the determination of the site value of any land, and to the apportionment of the value of land; and to "a provisional valuation of the site value of any land" (proviso (a)), and to "the original site value," and "the site value as ascertained under any subsequent valuation" (proviso (b)).

The reference to "the original site value of the land" in sub-s. (2) of s. 38, relating to statutory companies, appears to include, where necessary, a reference to the original capital value of the minerals. See note on "Returns and Accounts" under that section.

References to site value in ss. 16, 17, 18, pp. 139 *sqq.*, which relate to undeveloped land duty, are not to be construed as references to the capital value of the minerals, s. 16 (4), *supra*, p. 140.

And the references to site value in s. 25 have no application to the value of minerals, s. 25 (5), *infra*, p. 202.

24. For the purpose of the provisions of this Act as to minerals—

Definitions
for purpose
of mineral
provisions.

The expression "proprietor" means the person for the time being entitled in possession to the minerals, or to the rents and profits thereof, or any part of those rents and profits, but does not include a person entitled as lessee other than a person entitled to the possession of land comprised in a lease for any long term of years to which section sixty-five of the Conveyancing and Law of Property Act, 1881, applies;

The expression "rent" includes yearly or other rent, and shall in addition to the meaning assigned to it for the general purposes of this Part of this Act, be construed as including any fine, premium, or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift;

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—

Where any rent is paid or rendered otherwise than in money or money's worth, the amount of the rent shall be taken to be such sum as the Commissioners consider to be the value thereof;

The expression "mining lease" means a lease for mining purposes, that is, for searching for, winning, working, getting, making merchantable, carrying away, or disposing of, mines and minerals, or purposes connected therewith, and includes an agreement for such lease, or any tenancy or licence, whether by deed, parol, or otherwise for mining purposes, and the expressions "lessor" and "lessee" shall in addition to the meaning assigned to them for the general purposes of this Part of this Act be construed so as to include respectively a licensor and a licensee;

The expression "working lessee" means as respects the right to work minerals the lessee who is actually working the minerals, or who would have the right actually to work the minerals if the minerals were worked, and as respects mineral way-leaves the lessee who is in actual enjoyment of the way-leave, and the expression "immediate lessor" shall be construed accordingly;

The expression "working year" means the year ending the thirtieth day of September, or such other day as may in any case be approved by the Commissioners; and the expression "last working year" means the working year completed immediately before the first day of January in any financial year for which the duty is paid;

The expression "mineral way-leave" means any way-leave, air-leave, water-leave, or right to use a shaft granted to or enjoyed by a working lessee, whether above or under ground, for the purpose of access to or the conveyance of the minerals, or the ventilation or drainage of his mine or otherwise in connexion with the working of the minerals.

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Where any minerals are at any time being worked by means of any colliery, mine, quarry, or open working, all the minerals which belong to the same proprietor, if the minerals are being worked by the proprietor, or which the lessee has power to work if the minerals are being worked by a lessee, and which would, in the ordinary course of events, be worked by the same colliery, mine, quarry, or open working, shall be deemed to be minerals which are being worked at that date.

Minerals which are being won for the purpose of being immediately worked shall be deemed to be minerals which are being worked.

Minerals shall be deemed to be comprised in a mining lease if the right to work the minerals is the subject of a mining lease, or if the minerals are being worked under the terms of such a lease, although the lease has expired.

Where the circumstances of a district are such that in the opinion of the Commissioners it is impracticable to fix any sum which satisfactorily represents a rent customary in the district, the rent which would be paid under similar circumstances and ordinary conditions elsewhere than in the district shall be substituted for the rent customary in the district.

Minerals.—There is no definition of minerals in the Act. An attempt to elucidate the word is however made in the notes at pp. 169-172, *supra*. The provisions to which the definitions in s. 24 are intended to apply appear to be ss. 20-23, *supra*.

Proprietor.—Sub-ss. (1) and (7) of s. 65 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), are as follows:—

(1) Where a residue unexpired of not less than two hundred years of a term which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent

Enlargement of residue of long term into fee simple.

Sect. 24. or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other PROPRIETOR, rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

* * * *

(7) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

Rent.—The definition of “rent” for the general purposes of the Act, is contained in s. 41, *infra*, p. 301. By virtue of the definition of “rent” in s. 24, the word “rent” in the provisions as to minerals, means rent as defined in s. 41, with the additions made by the present definition. By the Conveyancing and Law of Property Act, 1881, s. 2 (ix), the word “fine” in that Act includes premium or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift; a practically similar definition is contained in the Rating Act, 1874 (37 & 38 Vict. c. 54, s. 7). The word “foregift” does not appear to be in very general use outside these Acts.

The usual case in which rent is paid or rendered otherwise than in money or money’s worth, in respect of minerals, is where there is a “render” of a proportionate part of the minerals worked or gotten under the lease. In such a case the Commissioners have to ascertain the value of the rent; their decision would appear to be the subject of appeal under s. 33 (1).

“The right to work coal is usually conceded in return for an annual rent, and a royalty which is covered by or ‘merges in’ the rent as far as the rent extends. The annual rent is variously called ‘fixed rent,’ ‘dead rent,’ ‘certain rent,’ or ‘minimum rent.’ . . .

“The methods adopted for charging royalties fall into three classes: (1) a fixed sum per ton raised, (2) a fixed sum per acre worked, (3) a sliding scale varying with the selling price of the coal raised. In Northumberland, Durham, Cumberland, South Wales, and Scotland, a tonnage rent is usually reserved, sometimes upon the total output with or without a deduction for colliery uses, sometimes upon the total sales, and sometimes varying according to the different descriptions of coal worked. In Lancashire, Yorkshire and the Midlands the royalty is usually calculated upon the acreage of the coal worked, and is sometimes regulated by the thickness of the seam worked (per foot thick). In Staffordshire and North Wales the royalty is calculated sometimes by the acre, sometimes by the ton. . . .

“When the amount payable for royalty upon the coal raised in any year is less than the fixed rent, the difference is known by the term of ‘shorts,’ and the lessee is usually allowed to recoup it by deducting it from subsequent overworkings; that is, from the excess, if any, of royalty over fixed rent in subsequent years. This power is sometimes limited to specified periods in the lease” (Royal Commission on Mining Royalties, Final Report, 1893, paras. 15, 17, 20).

As to rent and royalties in respect of ironstone, iron ore and lead, see paras. 28-33 of the Report.

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Mining Lease.—Section 2 (xi) of the Conveyancing and Law of Property Act, 1881, is as follows:—

A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes.

The present definition, it will be noticed, is expressed in somewhat wider terms.

It is submitted that the definition of "lease" in s. 41, *infra*, p. 302, is to be read in to the present definition so far as is necessary. If this is so, the words "mining lease" will not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption.

A grant of free liberty to dig for minerals, which does not convey any part of the minerals ungot, although it may be a mere license to dig (*Doe d. Hanley v. Wood* (1819), 2 B. & Ald. 724), would apparently be a mining lease within the definition in s. 24.

"Lessor"—"Lessee."—The meaning of these expressions for the general purposes of Part I. will be found in s. 41, *infra*, p. 303; see notes on p. 314.

Working Lessee—Immediate Lessor.—"Immediate lessor" apparently means the person of whom the "working lessee" holds directly under his lease of minerals or wayleave, or by whom he is directly licensed to enjoy his wayleave. As regards "mineral wayleaves" these definitions are incomplete. See note *infra*.

Working Year—Last Working Year.—The expression "last working year" is of considerable importance in connection with the ascertaining of "rental value" under s. 20, *supra*, p. 167. Some examples of the effect of the definition are given in the notes to s. 20, *supra*, p. 173; see also s. 22, *supra*, p. 179. As to the meaning of "financial year," see note, *supra*, p. 141.

Note that the definition of "working year" does not depend on the question whether any particular minerals have or have not been worked during the year.

Mineral Wayleaves.—As to wayleaves, waterleaves and airleaves, see Bainbridge, *Mines and Minerals*, Chapter XII.; MacSwinney, *Mines, Quarries, and Minerals*, Chapters XVI. and XVII. As to payments for the "right to use a shaft," see p. 198, *infra*.

It is apparently intended by the definition to exclude a wayleave granted to or enjoyed by, say, a railway company or a dock company (not being the persons working the minerals), for the purpose of bringing minerals to the railway or dock (Commons Debates, Official Report, 1909, Vol. 11, cols. 1181 *sqq.*). But it is not clear how far the definition carries out that intention; for

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though a "mineral wayleave" is limited to a wayleave, etc., "granted to or enjoyed by a working lessee," a "working lessee" is, "as respects mineral wayleaves, the lessee who is in actual enjoyment of the wayleave." As the definitions of "working lessee" and "mineral wayleave" are thus made mutually interdependent, neither definition is complete.

The mineral rights duty is levied in respect of mineral wayleaves under s. 20, *supra*, p. 167, and their rental value is to be ascertained under sub-s. (2) (c) of that section.

"The expression 'wayleave,' properly speaking, means simply 'liberty to make and use or to use (as the case may be) a road or way.' It imports the leave or permission of the owner of the property through or over which passage is required. . . . The expression is applied usually, if not exclusively, to mining roads or ways for the passage of minerals or for other mining purposes.

"Underground wayleaves are required for the purpose of carrying minerals through some property not comprised in the lease of the worker of such minerals. The payment in respect of underground wayleaves usually takes the form of a charge per ton carried; but in some parts of England it is calculated upon the acreage area of the coal carried, or takes the form of an annual rent, irrespective of the quantity actually carried.

"Surface wayleaves are required for the purpose of carrying minerals beyond the limits of the property from which they have been wrought, and on which they may have been drawn to bank, to a public line of railway or place of shipment. This is done for the most part by means of private railways . . . these lines are called 'private wayleave lines.' . . . Sometimes the land required is purchased, sometimes the use of it is obtained by the payment of an annual fixed rent, but more generally by the payment of a charge on the quantity of minerals carried. . . . Besides these surface wayleaves, a worker of minerals may have to pay an additional rent to the proprietors of the land upon which his pit is situated, if minerals which are not the property of such proprietor (usually termed 'foreign' minerals) are brought up the pit and over the surface of his property.

"There are other easements which occasionally have to be paid for by the worker of minerals. These are (1) waterleave, or liberty of watercourse, for the purpose of drainage, and (2) airleave, or liberty of aircourse, for the purpose of ventilation" (Royal Commission on Mining Royalties, Final Report, 1893, paras. 35-38).

Minerals being Worked.—Distinctions between the terms colliery, mine, quarry, have been drawn in various cases, and the extent of each term has been laid down. See Bainbridge, Chapter I.; MacSwinney, Chapter I. But as all three terms are here used and the limits of each colliery, mine, quarry, or working are for all practical purposes of the Act laid down by the definition, nothing appears here to be gained by citing these decisions.

As to "minerals which are being won," the word "won" has been stated by JAMES, V.-C., to denote that the mineral "was won when it was reached so as effectually to be worked" (*Lewis v. Fothergill* (1869), L. R. 5 Ch. 106 n.); and Lord HATHERLEY, L.C., said, "I conceive that the coal is won when it is put in a state in which

continuous working can go forward in the ordinary way" (*ibid.* 111; cf. also *Elliot v. Lord Rokeby* (1881), 7 A. C. 43).

The expressions "minerals worked" and "minerals being worked" appear in s. 20, *supra*, p. 167; and they have considerable importance in s. 22, *supra*, p. 179, under which the increment duty is levied in a different manner (and in certain cases is not levied at all) according as minerals are or are not "comprised in a mining lease" or "being worked." See notes thereto, *supra*, p. 182. The inclusion in "minerals which are being worked" of minerals being won for the purpose of being immediately worked has an important bearing upon the interpretation of s. 22, where the minerals are being worked by the proprietor: for he thus gets, in respect of minerals "being won" as here described, the benefit of sub-s. (3) of that section. See also the provisions for the valuation of minerals contained in s. 23, *supra*, p. 188. The expression "minerals being worked," wherever it appears in s. 22, appears in conjunction with the expression "comprised in a mining lease," and it has therefore no importance in that section, except in connection with minerals being worked by the proprietor.

Note that the definition of minerals which are being worked does not include minerals which would not in the ordinary course of events be worked by the same colliery, mine, quarry, or open working, even though they lie over or under the minerals which are actually being worked by that colliery, etc.

Minerals comprised in a Mining Lease.—"Mining lease" is defined *supra*, p. 194. The present expression includes all minerals so comprised, whether they are being worked or not. It generally appears together with the expression "minerals being worked." As to the bearing of these expressions, see the note on that last quoted, *supra*.

Rent Customary in the District.—The last paragraph of s. 24 applies to the provisions of s. 20 (2) (b) and proviso to s. 20 (2), *supra*, p. 167.

Valuation for Purposes of Duties on Land Values.

25.—(1) For the purposes of this Part of this Act, the gross value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restriction (other than rates or taxes) might be expected to realise.

Definition of
values of
land.

(2) The full site value of land means the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the

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WORKED.

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(3) The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and to any covenant or agreement restricting the use of the land entered into or made before the thirtieth day of April, nineteen hundred and nine, and to any covenant or agreement restricting the use of the land entered into or made on or after that date, if, in the opinion of the Commissioners, the restraint imposed by the covenant or agreement so entered into or made on or after that date was when imposed desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood, and the opinion of the Commissioners shall in this case be subject to an appeal to the referee, whose decision shall be final.

(4) The assessable site value of land means the total value after deducting—

- (a) The same amount as is to be deducted for the purpose of arriving at full site value from gross value; and
- (b) Any part of the total value which is proved to the Commissioners to be directly attributable to works executed, or expenditure of a capital nature (including any expenses of advertisement) incurred bona fide by or on behalf of or solely in the interests of any person interested in the land for the purpose of improving the

value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture; and

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- (c) Any part of the total value which is proved to the Commissioners to be directly attributable to the appropriation of any land or to the gift of any land by any person interested in the land for the purpose of streets, roads, paths, squares, gardens, or other open spaces for the use of the public; and
- (d) Any part of the total value which is proved to the Commissioners to be directly attributable to the expenditure of money on the redemption of any land tax, or any fixed charge, or on the enfranchisement of copyhold land or customary freeholds, or on effecting the release of any covenant or agreement restricting the use of land which may be taken into account in ascertaining the total value of the land, or to goodwill or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land; and
- (e) Any sums which, in the opinion of the Commissioners, it would be necessary to expend in order to divest the land of buildings, timber, trees, or other things of which it is to be taken to be divested for the purpose of arriving at the full site value from the gross value of the land and of which it would be necessary to divest the land for the purpose of realising the full site value.

Where any works executed or expenditure incurred for the purpose of improving the value of the land for agriculture have actually improved the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture, the works or expenditure shall, for the purpose of this

Sect. 25. — provision, be treated as having been executed or incurred also for the latter purposes.

Any reference in this Act to site value (other than the reference to the site value of land on an occasion on which increment duty is to be collected) shall be deemed to be a reference to the assessable site value of the land as ascertained in accordance with this section.

(5) The provisions of this section are not applicable for the purpose of the valuation of minerals.

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The Matters defined in this Section.—Four different kinds of value are defined by sub-ss. (1), (2), (3), and (4) respectively. The “gross value” is only used as a step in the calculation of full site value and total value. The “full site value” is only used for the purpose of calculating the “assessable site value.” The “total value” is also used for this purpose, but is used in other parts of the Act also. The “assessable site value” is used for many purposes in other parts of the Act, where every reference to site value (other than a reference to the site value of land on an occasion on which increment value duty is to be collected) is to be deemed a reference to “assessable site value” as defined in sub-s. (4).

All the values to be ascertained under this section are to be calculated for “land” as defined in s. 41, and in none of these values are minerals included, s. 25 (5).

In valuing any land, each of the values mentioned in s. 25 must be ascertained for that land. “In that way the subject will be able to put his finger on the spot where he finds cause of complaint” (the Attorney-General, Commons Debates, Official Report, 1909, Vol. 12, col. 667).

The Gross Value of Land.—Incumbrances, which are defined in s. 41, *infra*, p. 302, and any other burdens, charges, or restrictions (except rates and taxes) are to be disregarded in arriving at the gross value of land. As to restrictions, see the note on “Land which cannot be built upon,” *supra*, p. 148. Where, for instance, the land is mortgaged, the amount of the mortgage debt must not be deducted in arriving at the gross value; and the value of the mortgagor’s interest and that of the mortgagee’s interest will both form part of the gross value.

The “full site value” and the “total value” are each derived from the gross value, by making the deductions specified respectively in sub-ss. (2) and (3).

Sect. 25. The Amount which the Fee Simple of the Land, if sold at the Time in the Open Market by a Willing Seller, in its then Condition, might be expected to Realise.—Subject to what has been said in the last note, this phrase defines the gross value of land (sub-s. (1)), and is therefore the ultimate basis of the valuations made under s. 25. With one modification, the phrase appears also in sub-s. (2) as a part of the definition of “full site value.” It is therefore of great importance that this phrase should be elucidated as far as possible.

The Finance Act, 1894, s. 7 (5), *infra*, p. 345, provides, subject to a modification in the case of agricultural property, that “the principal value of any property shall be estimated to be the price which . . . such property would fetch if sold in the open market at the time of the death of the deceased”; and estate duty is assessed upon the principal value, s. 1, *infra*, p. 334. Section 7 (5) applies to all property coming within the provisions of s. 1, and not merely to the fee simple of land; and the words “by a willing seller” do not appear there, though they are perhaps implied. But see now s. 60 of the present Act. The phrase “enhanced market value” appears in provisions for valuing what is called “betterment,” when this is due to local improvements (Manchester Corporation Act, 1894, 57 & 58 Vict. c. ccix. s. 22 (3); London County Council (Tower Bridge, Southern Approach) Act, 1895, 58 & 59 Vict. c. cxxx. s. 36 (4), *infra*, p. 213, and London County Council (Improvements) Act, 1897, 60 & 61 Vict. c. ccxlii, s. 42 (4)). There may be similar expressions in other local Acts, but apart from the Finance Act, 1894, the principle of assessing the market value of land for the purpose of general taxation appears to be new to the law. The land tax, inhabited house duty, income tax under Schedule A, and corporation duty, the poor rate and the local rates connected with the poor rate, are all assessed upon the basis of annual value, that is to say, upon the rent which in some cases an actual, in other cases a hypothetical, tenant pays or can afford to pay to his actual or hypothetical landlord. Numerous and difficult problems must, therefore, arise in applying to various classes of land the standard of valuation set up by s. 25, and it is impossible in this note to do more than suggest a few general principles.

In ascertaining the rateable value or net annual value for poor rate purposes, the problem is to ascertain “the rent at which the [hereditaments] might reasonably be expected to let from year to year,” subject to certain deductions (Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96, s. 1)); and is therefore a different problem from that which has to be solved under the present section. But many of the principles which have been laid down by the Courts in connection with rateable value to the poor may be valuable in the present connection, and considerable use has been made of some of the decisions thereon in the ensuing notes.

Fee Simple.—Defined in s. 41, *infra*, p. 303. In the case of copyholds of inheritance, and copyholds held for a life or lives or for years where the tenant has a right of renewal, and customary freeholds, references to the fee simple of land shall be treated as references to the whole copyhold or customary interest or estate, s. 40 (1) (b), *infra*, p. 298.

At the Time.—The effect of these words will be different according as the gross value is being ascertained for the purpose of calculating therefrom the full site value or the total value, and according to the purposes for which either has to be ascertained. The total value and the site value for the purposes of the valuation to be made under s. 26 (1), *infra*, p. 229, are to be estimated as on April 30th, 1909. Consequently, the total value and the site value shown in the provisional valuation, and the original total value and the original site value as adopted under s. 27, *infra*, p. 240, will be estimated as on that date. Total value estimated under s. 2 (2) (d), upon a periodical occasion on which increment value duty is to be collected from a body corporate or unincorporate, is to be estimated as on that occasion. The total value at the time the lease determines, which has to be estimated for the purposes of reversion duty under s. 13 (2) upon the principles laid down in s. 25, will be ascertained as at that time. In the periodical valuation of undeveloped land made under s. 28, *infra*, p. 250, the site value of the land will be estimated as on April 30th in the year of valuation. See also the note "When duty is to be collected from a body corporate or unincorporate," *supra*, p. 81.

"In the case of house property, at any rate, there is a natural time of the year which is regarded as the proper property market, and unless a house has some special attractions it can hardly be said that there is an open market, say in the month of August, should that be the time of the deceased's death. Though the house may not be actually saleable then, yet values change so gradually that there is no difficulty in a skilled valuator putting a proper value upon the house even in August with his knowledge of past markets and present prospects. There will be no substantial change in the intrinsic value of the house between August, when it may have to be valued, and the following February, when it may have to be sold" (*Inland Revenue v. Murr's Trustees*, [1906] 44 Sc. L. R. 647, *per* Lord JOHNSTON). It was decided, however, in that case that a herd of prize cattle, the value of which, under s. 7 (5) of the Finance Act, 1894, was the subject-matter of the case, must be valued as if sold at the date of the owner's death, and that the Inland Revenue were not entitled to have a valuation as in the month when the best market might have been anticipated, or based on the result of an actual sale at the latter period. But it is submitted that the principles enunciated, in the passage quoted, with reference to house property apply in general to the ascertaining of the gross value of land under the present Act, and that the presence of the words "at the time" does not make it necessary to value the land as if it were sold at a forced sale or at an unfavourable time of the year. Land of various classes often suffers, however, from a temporary decline in value; and if there be a general decline in the value of the class of land to which the land to be valued belongs, such as might be caused by a general slackness of trade, by a slackness in the particular industry concerned, by a war, by a series of strikes, or by the imposition of new taxes upon land, it is submitted that the valuer must not disregard the decline in value, or value the land as if the market were certain to improve. In such cases the principle of the actual decision in the case cited appears to apply.

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“*In its then Condition.*”—The presence of these words in sub-s. (1) denotes in the first instance that the matters (“any buildings,” and so on) of which the land is assumed to be divested for the purposes of sub-s. (2), are to be included (so far as they actually exist) in ascertaining the gross value of the land; and that no deduction is to be allowed under sub-s. (1), in respect of any of the matters in respect of which deduction is allowed under sub-s. (2), (3), or (4). The land is, in fact, to be valued as it stands, but “free from incumbrances and from any other burden, charge, or restriction” (other than rates or taxes).

It is submitted that the words “in its then condition” do not render any less applicable the remarks made in the note headed “at the time,” *supra*, p. 205. And further, that these words do not preclude the elements of value discussed in the notes on “Deferred prospects,” “Special adaptability,” “Owner and tenant taken into consideration,” *infra*, pp. 208-210, from being taken into consideration in ascertaining the gross value; because such matters are constantly taken into account by the purchaser and vendor of land sold in the open market as it stands. Where, however, land is built upon, it will require weighty evidence to show that its gross value is actually greater than the value which it possesses in respect of the purposes for which it is actually used; although it is not impossible that land already built upon may in many cases have an additional element of value, as where a mill not workable for one trade, because of a declining demand, might readily be adapted for another trade; or where land covered by a row of small houses would be an eligible site for shops or flats. But, generally, it may be said that land built upon, or used for some other purpose (not being a merely temporary purpose), will, unless the contrary is proved, be found only to possess the value which it commands for the purpose for which it is used.

The Piece of Land to be Valued.—Many considerations in respect of value (for instance, those suggested in the notes headed “Special adaptability,” and “Owner and tenant taken into consideration,” *infra*, pp. 209, 210), and in the note on “Land divested of buildings,” etc., *infra*, p. 218, may depend upon the extent and character of the piece of land to be separately valued. For the purposes of s. 13 (2), *supra*, p. 122, the total value has to be ascertained in respect of the land demised by the lease in question. In the valuation provided by s. 26 (1), the total value and site value are to be ascertained separately in respect of each piece of land which is under separate occupation, and if the owner so requires, of any part of such land, *infra*, p. 229. The question what piece of land is to be separately valued in the periodical valuation under s. 28 is discussed *infra*, p. 259. Note, however, that under s. 29 (1) any duty under Part I. may be assessed as in respect of any such pieces of land, whether in separate occupation or not, as the Commissioners think fit; and that certain apportionments of site value may be made under s. 29 (2).

What Constitutes a Market.—The land is assumed by the section to be sold “in the open market by a willing seller;” and consequently, “if there are no willing buyers and no willing sellers, you have no market and no market value” (Sir Wm. Robson, Att.-Gen.,

Commons Debates, Official Report, 1909, Vol. 9, col. 20); or, put in another way, the basis of the valuation is "a hypothetical sale in the open market with a willing buyer who is willing because he has got an ordinary seller. . . . The actual value is what [people] could obtain under normal conditions in the open market" (Right Hon. R. B. Haldane, *ibid.*, cols. 754, 765).

All land in the United Kingdom is to be valued in the valuation to be made under s. 26. But, in the first instance, it obviously cannot be assumed that all that land is put on the market at once; for such an assumption would result in a merely nominal value for almost every piece of land. Going a step further, it clearly, for the same reason, cannot be assumed that, say, all the building land round a particular town is put on the market at the same time. And again, it ought not, in most cases, even to be assumed that the whole of a particular estate is put upon the market at once. On the other hand, it must not be assumed that the particular piece of land to be valued is the only one that can be put on the market at the time; to do so would be to put an enormously excessive value upon the land. "You cannot say, 'I value this particular plot of land, as if it were the only plot in the whole neighbourhood that is available for building purposes.' When you value it you must take into account the fact that there may be hundreds and thousands of acres equally eligible in the neighbourhood. That calculation is an essential part of the market value" (Right Hon. D. Lloyd-George, Chancellor of the Exchequer, Commons Debates, Official Report, 1909, Vol. 9, col. 103). To put it shortly, in valuing a piece of land, the valuer must not, on the one hand, assume a "forced sale" or a "glutted" market, nor must he, on the other hand, assume a "famine price" or "monopoly value." He must assume a sale "under normal conditions in the open market." See, however, the note headed "Special adaptability," *infra*, p. 209. Cf. also s. 60 (2).

The words "in the open market" in s. 7 (5) of the Finance Act, 1894, *supra*, p. 204, have been held to show that the price intended by that provision must be such as "would be obtainable upon a sale where it was open to every one, who had the will and the money, to offer the price which the property" of the deceased was worth as he held it (*per* FITZGIBBON, L.J., in *Att.-Gen. v. Jameson*, [1905] 2 I. R. at p. 230).

It has been said in Parliament that it is not necessary to assume a willing buyer; and this appears to be true in a limited sense, namely, that where no person is in fact likely to come forward as a purchaser, such a condition of things must not be ignored. In other words, if land is such that if put up for sale it would find no purchaser, that land has no value in the open market; and a willing buyer must not be assumed in order to assign to the land a value which it does not in fact possess. On the other hand, land is often put up to auction and withdrawn because no one has bid the price which the owner has placed upon it; and in such a case it does not follow that the land has no value, but merely that it has probably not so large a value as the owner put upon it.

It is submitted, however, that an unwilling buyer must not be assumed; in other words, if an individual under legal obligations

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or a company or local authority under statutory duties may be forced to buy a piece of land, the price which that individual would give is not the measure of value, although there may be, as pointed out, *infra*, circumstances in which that person or individual must not be left out of consideration as a possible purchaser in the open market.

Elements of Value.—The practical application of the principles stated in connection with “what constitutes a market” will often be a matter of great difficulty, even in the simplest cases of land which is covered with buildings, or which is put to some other use that is likely to be permanent, such as the case of houses forming part of a street in a well-established neighbourhood, or that of a mansion and park far away from a town. But there will be considerable complications in cases where there is a large quantity of building land available round a town, where a town-district already covered with small houses is changing in character, so that, say, business premises on the one hand, or larger dwelling-houses on the other, will soon be built upon it, or where a whole estate is eligible for building purposes, and so on. In such cases, the length of time which it will take to develop the area in question, the rate at which it can be built upon, the difficulties of drainage and road-making, the comparative value of those portions of the area which are more and less distant from the centre of the town, the fact that a part of the property has upon it buildings of a character (such as public-houses in certain cases) which may operate to reduce the value of the rest, the rate of interest at which a substantial person could borrow the money necessary for development—all these and many other considerations must be elements in determining the value. The speeches of Mr. Bonar Law and Mr. Tudor Walters (Commons Debates, Official Report, 1909, Vol. 9, cols. 752–762) may be consulted as showing some of these difficulties and the methods by which some of them may have to be met.

Extraneous Circumstances.—In *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. at p. 36, *infra*, p. 212, Lord DENMAN, C.J., said that in rating land, the poor rate officers “are to consider, not drily and only what would legally pass by a demise of it, but all the existing circumstances, whether permanent or temporary, wherever situated, however arising or secured, which would reasonably influence the parties to a negotiation for a tenancy, as to the amount of rent to be asked or given.” If the word “sale” is substituted for “demise” and “tenancy,” and if “the purchase-price” is substituted for “rent,” it is submitted that this passage expresses the duty of those ascertaining values under the present section. Instances of various kinds of circumstances which may have to be so considered will be found in the following notes.

Deferred Prospects.—In rating cases, it is an established principle that property should be valued “*rebus sic stantibus*,” that is, upon its value for the use to which it is actually put (*Staley v. Castleton* (1864), 33 L. C. M. C. 178). But there the problem is to ascertain the rent which might reasonably be expected from a tenant who took the property from year to year; here, it is the value to a purchaser in the open market that has to be ascertained. Consequently, although the value for the present use is here one

element in the total value, what were called by BLACKBURN, J., in the case last cited, "deferred and reversionary prospects," must also be taken into account, though these are excluded for poor rate purposes. He said, at p. 182, "If there be waste land near a large city which is entirely unprofitable, it is not rateable, although in after years it might become exceedingly valuable." But this sentence precisely affords an illustration of the additional element of value which will have to be included in ascertaining the gross value of land under the present section. There can be no doubt that if a piece of land, though now only waste land or only used for agricultural purposes, possesses appreciable advantages for building which are capable of being turned to account within a measurable time, it will command a larger price in the open market than if it were without those advantages. So also if it were capable of being put to any other use which is more profitable than its present method of user. This matter is made clear as regards site value by the provisions of s. 17 (2), which, in the case of certain agricultural land, frees from undeveloped land duty that part of the site value which exceeds the value of the land for agricultural purposes.

Where the deferred prospects can only be realised by means of expenditure, the purchaser will take that expenditure into account in calculating what he can afford to pay for the land, and the amount which it could command in the open market would diminish accordingly. Various heads of expenditure of this kind will be found in sub-s. (4).

In such cases and in many others the exact addition to the value to be made in respect of the deferred prospects may depend upon many and complicated considerations, see note "Elements of value," *supra*, p. 208. Care must be taken in calculating assessable site value not to allow twice over a deduction in respect of the estimated expenditure provided for by sub-s. 4 (c).

Special Adaptability.—It has been above pointed out that a piece of land must not be valued as if it were the only plot of land available, say, for building purposes. If a hundred acres are eligible for building, the valuer must not ignore that fact and value each acre of the hundred as if there were not ninety-nine acres also eligible. But a more difficult question arises where there is only a single piece of land available for one purpose, though that piece may also be available for other purposes. For instance, cases are familiar in which large prices have had to be paid by the governors of a school for a meadow which is the only land available near the school that could be converted into playing-fields for the school; by the owner of a factory for land covered with small houses which is the only land available for an extension of the factory; by a country gentleman for an arable field which he needs in order to round off his park or to improve his shooting. In such cases it is submitted that the value of the land for the purpose for which it is so available must not be left out of consideration.

It is submitted that the same remarks apply to cases where land used for one purpose has a special value in the market by means of its adaptability for other purposes, apart from its contiguity to the

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land of another owner. Land which is actually used as pasture land, but which is eligible on account of its peculiar natural advantages as a site for reservoirs, etc., to supply a district with water has been held, under the Lands Clauses Act, 1845, to have an added value on account of its special adaptability for the latter purpose (*Re Countess Ossalinsky* (1883), Browne and Allan on Compensation, 2nd ed., 659; *In re Gough and Aspatria Water Board*, [1904] 1 K. B. 417; *In re Lucas and Chesterfield Gas and Water Board*, [1908] 1 K. B. 571; [1909] 1 K. B. 16); the principle of these cases appears to apply to the ascertaining of values under s. 25, so that where any land has peculiar natural advantages for use by a statutory or other body or person for the purposes of that body or person, those advantages ought to be taken into consideration as adding an element of value; and it is submitted that they may be taken into consideration in estimating gross value, and in deducing therefrom an estimate not only of site value, but also of total value.

Whether the land derives an added value from its contiguity to the land of another owner, or from its peculiar natural advantages for the purposes of any body or person, it is submitted that the value to that owner or body or person is not the exact measure of value; in other words, that its value is something less than the price which, in certain circumstances, that owner or body or person might be forced to give for the land, although it is something more than the mere value for the purposes for which the land is actually used at the time.

Owner and Tenant taken into Consideration.—In the case of land actually covered by buildings which are likely to be permanent, or actually used in some other way which represents the highest value that the land possesses at the time, it seems clear that the value for the purpose for which the land is used is the amount which it might be expected to realise if sold at the time in the open market by a willing seller. In other words, the actual owner must be taken into consideration as a possible buyer in the open market, in much the same way as, in rating, the actual owner or tenant is taken into consideration as a possible hypothetical tenant (cf. *R. v. School Board for London* (1886), 17 Q. B. D. 738; *London County Council v. Erith*, [1893] A. C. 562; *Davies v. Scisdon Union*, [1908] A. C. 315). In certain circumstances, even the actual tenant may have to be taken into consideration, for there are many cases where the sitting tenant may be willing to give a higher price than any one else for the land in the open market, in order to avoid having to leave the land at the conclusion of his tenancy. This may often be an element of importance where the total value at the time the lease determines has to be ascertained under s. 13 (2), *supra*, p. 122. The owner of one piece of land might often be willing to give more than any one else for an adjoining piece of land which he holds or has held on lease.

In many cases, where two pieces of land are in one ownership, each piece of land might for that reason command a higher price in the open market. For instance, the owner of docks and of town warehouses connected therewith might be willing to give a higher price than any one else for the warehouses and their site (cf.

Mersey Docks v. Birkenhead Overseers (1873), L. R. 8 Q. B. 445; *London and India Docks v. Poplar Union* (1900), Ryde and Konstam's Rat. App. (1894-1904), 245; a water company may be prepared to give a higher price than any one else for land which contains a spring (*R. v. New River Co.*, (1813) 1 M. & S. 503). This is an element of value which must be taken into consideration, though not to such an extent as to assume what has been called a "blackmailing contract" between the hypothetical seller of one portion of a property and the owner of another portion (cf. *per* Lord HALSBURY, L.C., in *North and South Western Junction Rail. Co. v. Brentford Union*, (1888) 13 A. C. at p. 594).

Certain deductions are, in calculating "assessable site value," to be allowed in respect of "goodwill or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land," under sub-s. (4) (a), *vide infra*, p. 228.

Minerals.—The provisions of s. 25 do not apply to the valuation of minerals (sub-s. 5). But where surface land has minerals below it, and where those minerals are being worked, or where it is probable or possible that those minerals will some day be worked, the market value of the surface land will in most cases be diminished by the presence of the minerals, and that factor must be taken into consideration in ascertaining any of the values defined in s. 25.

Easements, Tolls, and Sporting Rights.—The fact that a certain part of the profits of the land goes to some person other than the rateable occupiers, has been held to be immaterial to the question of the amount of rateable value to the poor. In other words, the rateable value of the hereditament is to be assessed in view of the value of the land to the rateable occupier as well as of its value to the other persons who derive profit from the land (*R. v. Rhymney Rail. Co.*, (1869) L. R. 4 Q. B. 276; *Davies v. Seisdon Union*, [1907] 1 K. B. 630; [1908] A. C. 315). This principle, it is submitted, applies to the valuation of land under the present Act also. It appears clearly to be applicable where the person other than the occupier who derives profit from the land is in fact the owner of the land; for the value derived from both sources is value attached to the fee simple. But there are cases in which "easements," "tolls," and "sporting rights" (even though they may themselves be incorporeal hereditaments) in fact enhance the value of the land: see notes on these words under s. 41, *infra*, p. 309, and on "easements" under s. 26, *infra*, p. 234; and it is submitted that such enhancement of value must be taken into account in ascertaining the gross value of the land, upon the principle of *R. v. Rhymney Rail. Co.*, *supra*. It is submitted that the definition of "land" by s. 41, which excludes (unless the context otherwise requires) "any incorporeal hereditament issuing or granted out of the land," does not affect the view above suggested. The gross value of land is to be calculated as if the land were free from any burden, charge, or restriction, and therefore, it is submitted, as if the supposed purchaser "in the open market" were to be placed by his purchase in a position to enjoy the full value of the land, although some part of that value is in fact enjoyed by some person other than the present owner.

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Value Due to Trade or Business.—It has long been a principle of rating law that “if the ability to carry on a gainful trade upon the land adds to the value of the land, that value cannot be excluded merely because it is referable to the trade” (*R. v. Grand Junction Rail. Co.*, (1844) 4 Q. B., *per* Lord DENMAN, C.J., at pp. 38, 39). Acting upon this principle, the Courts have, in rating many classes of property, admitted evidence of receipts and expenditure in order to ascertain the annual value of the property. Sometimes, as in valuing the directly productive portions of railway, gas, water and dock undertakings, the rateable value is derived by an arithmetical process from the figures of receipts and expenditure, modified by an estimate of the share of the profits which the hypothetical tenant will expect to keep for himself. The ordinary method of valuing lines of railway is described in the opinion of Lord DUNEDIN in *Great Central Rail. Co. v. Banbury Union*, [1909] A. C. 78. In other classes of cases, evidence of the receipts and expenditure has been admitted as less definite, but not less direct, evidence of the value of the premises rated for the carrying on a gainful trade, as in the case of a racecourse (*R. v. Verrall* (1875), 1 Q. B. D. 9); of refreshment-rooms at a railway station (*Clark v. Alderbury Union* (1889), 6 Q. B. D. 139); of an ordinary public-house (*Cartwright v. Seuloates Union*, [1900] A. C. 150); of lairages for the reception and slaughter of cattle at a dock (*Mersey Docks v. Birkenhead Union*, [1901] A. C. 175). Again, where land is owned for the purpose of collecting tolls (though tolls are not rateable *per se*) the land may derive an added rateable value from its advantages for that purpose, see note on “Easements, tolls, and sporting rights,” *supra*, and cf. the remarks of BLACKBURN, J., in *New Shoreham Harbour Commissioners v. Lancing* (1870), L. R. 5 Q. B. at pp. 496, 498; *R. v. North and South Shields Ferry Co.* (1852), 1 E. & B. 140. Again, a watercourse, used for working a lead-mine, has been held to have an enhanced rateable value by reason of that use (*Talargoch Mining Co. v. St. Asaph* (1868), L. R. 3 Q. B. 478). On the other hand, it must always be borne in mind that although a good trade may be done upon particular premises, that fact does not of itself enhance the value of the premises, if a similar trade could equally well be done upon other premises: see *per* BLACKBURN, J., in *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B., at p. 97; in *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B., at p. 144. It is for this reason that receipts and expenditure are not given in evidence in connection with the rating of ordinary shops. The above is the merest summary of this large and somewhat complex subject; it will be found exhaustively treated in Ryde on Rating. See also the note on “Tolls” under s. 41, *infra*, p. 309.

The principles of rating just cited have been adopted with reference to annual value, as between hypothetical landlord and hypothetical tenant; and it may be admitted that they apply to some extent with more force in that connection than they would in connection with the estimating of capital value as between vendor and purchaser in the open market. But it is submitted that the ability to carry on a gainful trade upon the property sold is an element which cannot be left out of account in estimating the gross value of land, although it may not afford such a conclusive measure of value as in certain cases in connection with poor rate. To give

only a very familiar instance, a fully licensed public-house at a street corner will usually sell at auction for a higher price than other houses of equal size in the same road; and instances of this kind might easily be multiplied by experience. See also the note on "Goodwill," *infra*, p. 227.

In an improvement Act of the London County Council (58 & 59 Vict. c. cxxx.), it was provided that an "initial valuation" should be made for the purpose of assessing a charge placed upon the lands in respect of an increase in value due to the improvement. This valuation was to be made independently of the improvement, and was to distinguish the value of the land apart from any existing buildings thereon from the value of the land and buildings as a whole. It was held that, in valuing a public-house under this local Act, the fact that the house was held subject to a "tying" covenant could not be considered in valuing the site apart from any existing buildings thereon; but that, if this fact was admissible at all, it was relevant only as an element in the valuation of the site and buildings together (*In re London County Council and City of London Brewery Co.*, [1898] 1 Q. B. 387). It was held, further, that the takings and payments could not be treated as in themselves evidence of value at all; but this part of the judgment was based on *Dodds v. South Shields Union*, [1895] 2 Q. B. 133, a rating case which was practically overruled by *Cartwright v. Sculcoates Union*, [1900] A. C. 150, *supra*, p. 212, and can therefore no longer be regarded as good law. If, however, the *City of London Brewery* case is now followed upon the first point, it would appear that the ability to carry on a gainful trade upon premises is an element in the gross value of land. See also the note on "The Full Site Value of Land," *infra*, p. 217.

Value of Buildings and Machinery.—Where the land of which the gross value has to be ascertained has buildings or machinery upon it, the element of value which these add to the total value of the land will often be identical with their capital value. In rating many kinds of property, such as factories, schools, colleges and university buildings, sewage works, and other premises occupied by public authorities, the indirectly productive parts of railway, water, gas, canal, dock, and electric undertakings, and so on, it is usual to ascertain the rent by putting some percentage on capital value. The capital value for this purpose is arrived at by what is known as "the contractor's test"; that is to say, the value of the buildings and machinery is taken to be the sum for which equally suitable buildings and machinery could be provided by a contractor, see *R. v. West Middlesex Waterworks* (1859), 1 E. & E., at p. 723. The reason why the value of what has been called a "substituted building" is taken in these rating cases, is that it would in many instances be misleading to take the actual cost of erection and equipment. That cost cannot always be accurately ascertained even where the building is comparatively new. But supposing that it can be ascertained, "the total of the items of structural cost might very much misrepresent the structural value, and might in many cases be apt to lead to an over-estimation of it" (*Liverpool Corporation v. Llanfyllin Union*, [1899] 2 Q. B. 14, *per* VAUGHAN WILLIAMS, L.J., at p. 23). Moreover the capital may have been to

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some extent injudiciously expended, and what was costly may have become worthless by subsequent changes (*R. v. Mile End Old Town* (1847), 10 Q. B. 208, at p. 218). Upon the whole of this subject, see Ryde on Rating, 2nd ed., especially pp. 175-180.

Instances and examples of valuation on the basis indicated of waterworks will be found in the cases above cited; of schools and colleges in *R. v. School Board for London* (1886), 17 Q. B. D. 738; 55 L. J. M. C. 33; *School Board for London v. Wandsworth Union* (1899), Ryde and Konstam's Rat. App. (1894-1904), 24; *London County Council v. Islington Assessment Committee* (1906), Konstam's Rat. App. (1904-1908), 6; *Royal Medical College v. Epsom Union* (1902), Ryde and Konstam's Rat. App. (1894-1904), 82; of university buildings, in *Oxford University v. Mayor of Oxford* (No. 1) (1902), *ibid.*, 87; *Cambridge University v. Cambridge Union* (1904), Konstam's Rat. App. (1904-1908), 105; of sewage works, in *London County Council v. Erith*, [1893] A. C. 562, *supra*, p. 210; of portions of electric undertakings, in *Charing Cross Electricity Co., Limited v. Lambeth Assessment Committee* (1900), Konstam's Rat. App. (1904-1908), 21; *London United Tramways, Limited v. Brentford Union* (1904), *ibid.*, 87, 410. Instances of this kind might be multiplied, but it is thought that sufficient examples have been given here to illustrate the principle. In reading those of the cases cited which are reported at quarter sessions it should be noticed that the court did not always state which (if any) of the methods of valuation put before it was adopted.

It is submitted that in ascertaining the total value for the purposes of the present Act, the contractor's test will, subject to a qualification as to depreciation to be presently indicated, supply a useful guide; for excessive and obsolete expenditure (*vide infra*, p. 214), does not operate to increase the market value of the fee simple any more than to increase rent. Depreciation, however (*infra*, p. 215), does have a far greater effect on market value than on rent.

In the case of shops and dwelling-houses in towns, it is often easy to estimate rent, and in the case of many classes of business premises, the profits made afford an indication of the rent (*vide supra*, p. 212). It is not, therefore, in rating such classes of property, usually necessary to have recourse to capital value as an index. And in connection with such property as country mansions it has often been found that, for one reason or another, as to suit the fancy of the owner, capital has been expended in such a way that the capital value affords no guide to the rent that could be obtained. But capital value may, under the present Act, have to be estimated in connection with all classes of property. The considerations indicated in the following note on excessive expenditure may be of importance in connection with property of the last class mentioned.

Excessive Expenditure.—Where works or other buildings have been erected upon land in excess of existing requirements, and so as to supply a "stand-by" or a resource against the contingency of extended business in the future (cf. *R. v. South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359; *Mayor, etc. of Liverpool v. Llanfyllin Union* (1899), 80 L. T. 667), the fact that this part of the buildings is available for those purposes may increase the value of the land

to the buyer; on the other hand, the spare buildings may even operate to diminish the value, if they are such that any possible buyer would be likely to look upon them as a "white elephant," and would give a smaller price in the open market because of their existence. Similar remarks may be made as to expenditure which has been proved to be fruitless or has become obsolete (cf. *London County Council v. Woolwich Union* (1891), Ryde's Rat. App. (1891-1893), 126). Sometimes ornament is placed upon buildings, whether for fancy or for other reasons, which does not operate to increase the value to a seller, and may even diminish that value. But expenditure of this kind, though sometimes described as "inutile," has often a real use for purposes of advertisement, or for lending dignity to a building which requires that quality (cf. *Oxford University v. Mayor, etc., of Oxford* (No. 1), Ryde and Konstam's Rat. App. (1894-1904), 87). In cases where there has been extra expenditure on foundations, etc., owing to the unexpected difficulties of the site, this expenditure will usually not add to the amount which a buyer in the open market would give for the land (cf. *Mayor, etc., of Bradford v. Keighley Union* (1906), Konstam's Rat. App. (1904-1908), 517). But if the site, though difficult to build upon, is the most suitable site for the purpose for which the buildings are erected, the expenditure will generally be found to have added to the market value of the land. Thus in *Liverpool Corporation v. Llanfyllin Union, supra*, p. 213, expenditure on replacing a church, schools, etc., which it had been necessary to destroy in order to construct waterworks, was held to be rightly taken into account in assessing the waterworks to poor rate.

Depreciation.—There is an important qualification to be made as to the application of the "contractor's test" to the ascertaining of the value of buildings and machinery for the purposes of the present Act. For the purposes of poor rate, the rent has to be ascertained, and it will often be the case that a tenant could afford to give the same rent for buildings and machinery that have depreciated as for premises newly erected and equipped; as long as the premises are efficient for their purpose he will pay the same rent for them, and it is nothing to the tenant that the landlord may have to replace the buildings or the machinery in a few years. But such a consideration is obviously highly important to a purchaser of the fee simple, and the greater the depreciation the less the amount that such a purchaser will give. Where, therefore, it is necessary to estimate the capital value of the buildings and machinery, they must be looked at as they stand depreciated. It is their depreciated value that must be taken, and not their new value nor the value at which equally efficient buildings and machinery could be erected by a contractor.

Rates and Taxes.—The price which land would command if sold in the open market by a willing seller is clearly reduced as the rates and taxes payable in respect of that land are increased; in other words, the buyer will consider what rates and taxes he or his tenant will be liable to pay in respect of the land before he decides what price he can afford to pay for it. The rates and taxes existing "at the time" with respect to which the land is valued must therefore be taken into consideration in ascertaining its gross

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value, and s. 25 (1) makes it clear that, for this purpose, the land is to be considered as subject to rates and taxes. As to the meaning of "at the time," in connection with various valuations, see note thereon, *supra*, p. 205. In making the valuation provided by s. 26, *infra*, p. 229, the duties imposed by the present Act will not be taken into account, unless it can be shown that they had already had the effect, on 30th April, 1909, of decreasing the market value of the land; for the purpose of that valuation is to ascertain the values of land as at that date.

Expenses of Sale, etc.—The actual amount obtainable in the open market is to be taken as the gross value of the land; and no allowance is made for the expenses that would attend the hypothetical sale if it actually took place, such as expenses of valuing for sale, of advertising the sale, the legal expenses of the conveyance, and so on. As to the deduction of value attributable to expenses of advertisement in ascertaining "assessable site value," *vide infra*, p. 225.

Only what passes on Sale to be included.—The fact that it is the fee simple of the land which is assumed to be sold denotes, it is submitted, that the value which is to be ascertained is the amount which would be paid for the land, with such buildings and other things as pass upon a sale of the fee simple, and that such matters as chattels and tenant's fixtures, which do not pass upon such a sale, must be excluded from consideration. This matter may be important where the evidence of an actual sale is used with reference to the valuation, see next paragraph. The principle laid down in *Kirby v. Hanslet Union*, [1906] A. C. 43 (namely, that the valuer in valuing a factory for poor rate must value it as he sees it, and must not exclude chattels, although they would not pass on a demise of the premises), should not, it is submitted, be extended to the interpretation of the present section, by which the valuation is based not upon a hypothetical demise, but upon a hypothetical sale.

Evidence of Actual Sales.—The price paid for the piece of land to be valued upon an actual sale may often be important evidence of the market value of the land. If the sale is recent, and if it has taken place in the open market, this may be the best evidence obtainable. But this evidence will become less valuable in proportion as the time of the sale is more remote from the time with regard to which the value has to be ascertained. If the circumstances of the land have changed since the sale took place, the evidence may be practically useless (cf. *R. v. Skingle* (1798), 7 T. R. 549). Or again, if the sale has taken place under other circumstances than in the open market, additions or subtractions may have to be made to or from the price paid in order to ascertain the value; for instance, if the sale has taken place in pursuance of a family arrangement, the price paid may have been less than the market value; if in the course of the formation of a company, it may have been more. Moreover, the actual price paid upon a sale may be something more or less than the consideration actually given for the land, as in a case where goodwill or chattels are bought as well as the land itself. Upon both these points, see the cases cited in the note on "Consideration for a transfer on lease," *infra*, p. 259.

The Full Site Value of Land.—In order to ascertain this, it is first necessary to ascertain the value which the fee simple of land if sold at the time in the open market by a willing seller might be expected to realise, if the land were divested of any buildings and of any other of the matters mentioned in sub-s. (2). If the value so ascertained is less than the gross value of the land, the difference is to be deducted from the gross value, and the result is the "full site value." If the value so ascertained is the same as the gross value, that value is the "full site value." There may be cases, however, where the value so ascertained is greater than the gross value; for land which is eligible for buildings of a better class than those which actually stand upon it might conceivably be expected to realise a greater amount in the open market if the buildings actually standing upon it were cleared away, than if they continued to stand; and this although the potential value of the land for carrying the better class of buildings is always taken into account. In such a case it can hardly be intended that the amount by which the value ascertained under sub-s. (2) exceeds the gross value is to be deducted from the gross value in order to calculate the full site value, and it is submitted that the value ascertained under sub-s. (2) will be the "full site value."

The words "if sold at the time in the open market by a willing seller" have been somewhat fully discussed in connection with "gross value," *supra*, pp. 204 *sqq.*

The words "in its then condition" not appearing in sub-s. (2), the note so headed at p. 206 is not here relevant; neither, of course, are the notes on "value of buildings and machinery," "excessive expenditure," and "depreciation," *supra*, pp. 213-215.

Further, if the principles laid down in *In re London County Council and City of London Brewery Co.*, [1898] 1 Q. B. 387, *supra*, p. 213, are to be followed in the interpretation of the present section (so far as that case was not impliedly overruled by *Curtwright v. Sculcoates Union*, *supra*, p. 212), it would appear that the ability to carry on a gainful trade upon premises is not an element on the valuation of a site apart from the buildings upon it, and cannot be regarded in ascertaining the value as "if the land were divested of any buildings," etc., under sub-s. (2). And if this is the case, the matters discussed in the note on "value due to trade or business," *supra*, p. 212, are not relevant to sub-s. (2). But the phraseology of the present section and of the provisions upon which the *City of London Brewery Case* was decided are not exactly the same, and it is submitted that that decision ought not to be followed so as to exclude in every case from the consideration of the value of land as if it were divested of buildings, any element of value which may be due to the ability to carry on a gainful trade upon that land, and that the principle laid down in *R. v. Grand Junction Rail. Co.*, *supra*, p. 212, applies *mutatis mutandis* to the ascertaining of the market value of a cleared site. To take a concrete case, it is submitted that a corner site (though assumed to be divested of buildings) which would be eligible as a site for a public-house likely to do a good trade, would therefore have a greater value than if it were not so eligible, and further that if a public-house in which a gainful trade is

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being done stands on that site, that fact affords evidence of the presence of such an additional element of value in the site.

The "full site value" is not (as such) put to any practical use in Part I. of the Act. But the deduction made from the "gross value" in arriving at "the full site value" is used as an element in calculating "assessable site value" under sub-s. (4) (a). It is perhaps because the main purpose of sub-s. (2) is to ascertain the amount of such deduction, that sub-s. (2) is cast in its somewhat curious form.

Land Divested of Buildings, etc.—In order to ascertain the value which is under sub-s. (2) to be compared with the gross value for the purpose of arriving at the full site value, it is necessary to assume that the land is divested of the buildings and other matters mentioned in sub-s. (2). The conception of land so divested is not an easy one to form; and to estimate the market value of the land under such conditions is a degree more difficult.

Note that it is only the piece of land which is to be valued (*vide supra*, p. 206) that is deemed to be divested of the matters here mentioned. The surrounding lands are to be considered as they actually exist. Thus, if the piece of land to be valued is the site of a house in a street, only that site is assumed to be vacant. The houses on either side of that house and across the street are standing, the street is made up and sewered, the gas and water supplies are ready to be laid on—all the existing advantages and disadvantages of the town and neighbourhood are already in existence. A public-house or a rag mill may stand in the street, and may diminish the value of the rest of the property for certain purposes; all these matters may have to be borne in mind in valuing the site assumed to be cleared. If the land to be valued is the site of a factory, such things as railway sidings, mains for supply of power, gas, or water, may be in existence, and their existence (at any rate up to the limits of the land to be valued, see "appurtenant to," *infra*, p. 219), must be taken into consideration. See, however, the notes on the deductions in respect of works and capital expenditure under sub-s. (4) (b), *infra*, p. 224. If the piece of land is cleared building land, all the advantages which are already in existence, and which a building on the land will be able to enjoy, must be considered. Illustrations of this kind might be multiplied indefinitely; it is clear, however, that the assumption must not be made that all the surrounding land is a cleared site, but only the piece of land that is to be valued. On the other hand, it must not be assumed that the piece of land to be valued is the only one available for building, and so on. See note on "Elements of value" and succeeding notes, *supra*, pp. 208-216.

As to the principles suggested for ascertaining the value of buildings and machinery under this Act, see pp. 213-215, *supra*.

It must always be borne in mind that in divesting the land of the matters specified in sub-s. (2), what has to be excluded or deducted is not the bare value of these matters, but the portion of the value of the land that is attributable to them. Thus suppose a plot of land with buildings upon it to have a total value of £200, and the buildings to have a capital value of £100; if the buildings

are removed, the value of the site is not necessarily £100. It may, for instance, be worth £150 as a cleared site for a more suitable building; or the expense of erecting any new building at all upon it, or using it in any suitable way, may be such that its value as a cleared site is not more than £80.

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“*Buildings*” and “*structures*”: a number of cases have been decided under various Acts and covenants upon the meaning of similar words, but it is submitted that as the object of this sub-section is to find the value of the bare land, the land should be assumed to be divested of everything that can be called a building or structure, and that the meaning of the words cannot be limited by decisions upon Acts which impose liabilities and are sometimes penal, or upon contracts which set up obligations. A number of cases decided upon the meaning of “buildings” will however be found cited in the notes upon s. 16 (2), *supra*, p. 144. Among the numerous cases decided upon the meaning of “structure” in various Acts may be mentioned *London County Council v. Pearce*, [1892] 2 Q. B. 109; *London County Council v. Hancock*, [1907] 2 K. B. 45.

There may be a difficulty where some construction like a railway embankment exists upon the land, which might, from certain points of view, be said to form part of the land (cf. *Long Eaton Recreation Grounds and Midland Co.*, *supra*, p. 146); but it is submitted that wherever the facts render it possible to assume the ground to be divested of such a construction, that assumption ought to be made. Where land has been embanked or terraced (as is often done in forming, *e.g.*, playing-fields) it may not be possible to treat the land as divested of the earth, etc., which has been placed upon it. Certain works of these and other kinds may, however, give rise to a deduction in ascertaining “assessable site value,” see s. 4 (b).

“*Fixed or attached machinery*”: although these words are used, it seems clear that the land is to be assumed to be divested of machinery of all kinds, including machinery which rests by its own weight without being attached, like some of that described in *Tyne Boiler Works Co. v. Longbenton* (1886), 18 Q. B. D. 81.

Structures “on, in, or under the surface”: brick arches supporting a road (*Thompson v. Sunderland Gas Co.* (1877), 2 Ex. D. 429, *supra*, p. 146), street boxes connected with electrical supply (*Whitechapel Board of Works v. Crow* (1901), 65 J. P. 549; *Charing Cross Electric Corporation v. Woodthorpe* (1903), 67 J. P. 286) would appear to be structures within the second and third of these classes.

“*Appurtenant to*”: note that the structures on, in, or under the surface, of which the land is deemed to be divested must be appurtenant to or used in connection with the buildings. Any structures (supposing they are to be so called), such as sewers, gas, or water mains and so on, which (though they stand “on, in, or under the surface”) are not actually in any way connected or used with the buildings on the land would not appear to be among the matters of which the land is to be divested, see note on “Any easements affecting the land,” *infra*, p. 221.

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"*Timber*" appears to include underwoods; cf. sub-s. (4) (b), where "timber" and "trees" are both mentioned.

The Total Value of Land.—This sum is derived from the gross value of land (as ascertained under sub-s. (1)) by making certain deductions therefrom specified in sub-s. (3), which will be discussed in detail, *infra*.

The "total value" is used as a stage in the calculation of "assessable site value," under sub-s. (4), *vide infra*, p. 223. The "total value" is also itself used in the operative parts of the Act, as follows:—

The "total value of land" has to be shown separately in the valuation of all land in the United Kingdom made under s. 26, *infra*, p. 229. And an owner of land may, if he thinks fit, furnish his own estimate of the total value under sub-s. (3) of that section. Provisions as to the adoption of the "original total value" of land are contained in s. 27, *infra*, p. 240. In the provision for a periodical valuation of undeveloped land contained in s. 28, *infra*, p. 250, there is, however, nothing requiring the total value to be shown.

Reversion duty is assessed (in the case of a freeholder) upon the amount (called "the value of the benefit accruing to the lessor") by which the total value of the land at the time the lease determines (subject to certain deductions) exceeds the total value of the land at the time of the original grant of the lease (s. 13 (2), *supra*, p. 122). The former "total value" has to be ascertained according to the definition contained in s. 25 (3); the latter is, however, to be ascertained on a basis laid down in s. 13 (2). No other of the taxes imposed by Part I. is assessed with reference to the total value. The total value of land is also used as a measure imposing a limit to exemptions in s. 8, p. 107, and in s. 18, p. 164.

The total value estimated upon the principles laid down in s. 25 is used as the site value of land on the occasion on which increment value duty is collected from a body corporate or unincorporate under s. 2 (2) (d), *supra*, p. 76.

Section 38, *infra*, p. 287, makes no special provision for ascertaining the total value of land held by a statutory company as there defined, and such total value must therefore, it is submitted, be ascertained according to the provisions of s. 25. As to the total value of copyholds, see s. 40, *infra*, p. 298.

Deductions to be made in ascertaining Total Value.—These deductions are to be calculated in every instance at the amount by which the gross value, as defined in sub-s. (1), would be diminished if the land were sold subject to the matter in question. The measure of the deduction is not the actual expenditure incurred or to be incurred upon the matter in question; but the deduction, in respect of each of the specified matters which arises, is to be equal to the diminution in the market value of the land due to that matter. The decision of the Commissioners in respect of any of these deductions appears to be the subject of the right of appeal to a referee under s. 33, *infra*, p. 266; on the question whether the restraint imposed by a covenant and agreement entered

into or made on or after April 30th, 1909, was desirable when imposed, the decision of the referee is final. As to appeals against decisions of the referee in other matters, *vide infra*, p. 267. As to the recording of these deductions, see s. 30, *infra*, p. 255; and as to the time for claiming them, see s. 12, *supra*, p. 121.

The matters which may give rise to such deductions are as follows:—

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(i) *Any fixed charges.* These are defined in s. 41, *infra*, p. 303.

(ii) *Any public rights of way.*

(iii) *Any public rights of user.*

(iv) *Any right of common affecting the land*; a right of common is “a profit which a man hath in the land of another, as to feed beasts, to catch fish, to dig turf, to cut wood or the like. The right derives its name from the community of interest which thence arises between the claimant and the owner of the soil, or between the claimant and other commoners entitled to the same right; all which parties are entitled to bring actions for injuries done to their respective interests—and that both as against strangers and as against each other” (Stephen’s Commentaries, 14th ed., Vol. I., p. 394).

(v) *Any easements affecting the land*: “an easement may be defined to be a privilege without profit, which the owner of one neighbouring tenement hath of another, existing in respect of their several tenements, by which the servient owner is obliged “to suffer or not to do” something on his own land, for the advantage of the dominant owner” (Gale on Easements, 8th ed. p. 8).

It is clear that where land is held subject, say, to a right of light or air, a right of way, or a liability to receive the drainage of adjoining lands (not being public rights of way or of user) there would be a right to a deduction in this respect, if the easement in fact reduced the value of the land. It is submitted that where, for instance, a sewer, a water, gas or electricity main, or a railway tunnel is taken under, through or over land, each of these is something more than a mere easement, and that no deduction can be made in ascertaining the total value on account of the existence of any of them, except of course in so far as its existence diminishes the value of the land for any other purpose, such as building upon it. Where, therefore, a piece of land separately assessed (*vide* s. 29, *infra*, p. 252), has, say, a sewer, a main, or a railway tunnel running under, through, or over it, the value of the sewer, main, or tunnel must, it is submitted, be included in ascertaining the total value of the land. The value of the right to take a sewer, main, or tunnel over, through, or under the land would appear to be properly included in the full site value, *vide supra*, p. 218; as to the original site value of land held by statutory companies, see s. 38 (2), *infra*, p. 287. It is true that the right of a water company to carry water under land by means of mains has been held to be a mere easement, and not, therefore, to be the subject of land tax, which is charged in respect (*inter alia*) of lands, tenements and hereditaments, under 38 Geo. 3, c. 5, s. 4 (*Chelsea Waterworks Co. v. Bowley* (1851), 17 Q. B. 358). But, in later cases, a railway company having a tunnel under a highway

Sect. 25. (*Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416, see the remarks upon *Bowley's Case*, pp. 422, 428), and a local authority having a lavatory under a highway, the subsoil of which was vested in them by the Public Health (London) Act, 1891, 54 & 55 Vict. c. 76, s. 44 (*Mayor, etc., of Westminster v. Johnson*, [1904] 2 K. B. 737), were held to have something more than a mere easement, and to be subject to land tax. It is unlikely, therefore, that there would now be any extension of the principle of *Chelsea Waterworks Co. v. Bowley*, *supra*. "A sewer vests in the [sewerage] authority, not merely in the sense of their having an easement, but in the sense that they are owners of the space embraced by the sewer, and that they have a right to that space as owners, so long as it is required for the purposes of the sewer" (*Ystradgynodwg Main Sewerage Board v. Bensted*, [1907] 1 K. B. 490, *per* COZENS-HARDY, L.J., at p. 499; [1907] A. C. 264). For further cases illustrating these principles see the note "what appears to be a mere easement may constitute a separate occupation," *infra*, p. 232. See also note on "easements," under s. 41, *infra*, p. 309.

Where a sewer, main, or tunnel, etc., is upon or under land held by an exempted body (see ss. 35-38, *infra*) the above considerations may be immaterial from the point of view of taxation; but it is important that where the subjacent or superincumbent land is in private ownership it should be assessed separately, *infra*, p. 238, from the sewers, etc.; otherwise the private owner may find himself taxed in respect of the value of the sewer, etc.

(vi) *Any covenant or agreement restricting the use of the land entered into or made before 30th April, 1909.* The deduction in respect of such covenant or agreement is to be allowed independently of the limitations imposed in respect of covenants or agreements entered into or made on or after 30th April, 1909; see the note thereon, *infra*, for examples of covenants or agreements restricting the use of land.

(vii) *Any covenant or agreement restricting the use of the land, entered into or made on or after 30th April, 1909, if in the opinion of the commissioners, the restraint imposed by the covenant or agreement was, when imposed, desirable either (a) in the interests of the public, or (b) in view of the character and surroundings of the neighbourhood.* Upon the question whether it was so desirable, there is an appeal to the referee only under s. 33 (1), and no appeal from the referee's decision to the High Court or County Court. The words "reasonably necessary in the interest of the public, or in view of the character of the surroundings or neighbourhood" appearing in s. 17 (3) (c) are somewhat similar to those used here. If condition (b) is fulfilled, it does not appear that the restraint imposed by the covenant or agreement need also be desirable in the interests of the public at large.

Covenants or agreements imposing restrictions on the use of land are very common, especially those which restrict building on land demised or leased, see *e.g.* *Bowes v. Law, Long Eaton Recreation Grounds v. Midland Rail. Co., Lady Holland v. Kensington Vestry*, *supra*, pp. 144-148; *Powell v. Hemslcy*, [1909] 2 Ch. 252; *Reid v. Bickerstaff*, [1909] 2 Ch. 305. Covenants or agreements not to carry on any trade or business, or any trade or business of a

particular description (such as those in *Doc v. Keeling*, *Wauton v. Coppard*, *Doe v. Bird*, *Bramwell v. Lucy*, *Rolls v. Miller*, *Portman v. Home Hospital Association*, *Nussey v. Provincial Bill Posting Co.*, *supra*, pp. 148-150), appear to be covenants and agreements restricting the use of the land within the meaning of this provision. In any case the requirements of the provision must be proved to the commissioners to be fulfilled before any deduction can be allowed under this provision in respect of any covenant or agreement.

Apparently an implied covenant or agreement will have the same effect as if it were actually expressed. Easements affecting the land, although created by covenant or agreement, are the subject of deduction, independently of the words now under consideration.

Copyholds.—A provision for a special deduction affecting both total value and assessable site value in the case of certain copyholds and of customary freeholds, is made by s. 40 (1) (a), *infra*, p. 298.

Assessable Site Value.—This sum is to be derived from the total value (ascertained under sub-s. (3)) by making the various deductions allowed by sub-s. (4), which will be dealt with *infra*, p. 224.

The phrase, "assessable site value" appears only in s. 25. In the other parts of the Act, the same thing is referred to as "site value"; but is to be distinguished from the "site value of land on an occasion on which increment value duty is to be collected," which is a different matter altogether, and is defined in s. 2 (2), *supra*, p. 76.

In the valuation to be made under s. 26 (1), *infra*, p. 229, the site value (that is the "assessable site value" as here defined) is to be shown separately, and the value of agricultural land for agricultural purposes is also to be shown separately where that value is different from the site value. As to estimates of site value by the owner, see s. 26 (3). Where the site value as shown in that valuation, or as amended under s. 27, *infra*, p. 240, has been adopted or finally settled under s. 27, it is called the "original site value." As to "original site value" in the case of statutory companies, see s. 38 (2), *infra*, p. 287.

The site value of the land is to be shown in the periodical valuation of undeveloped land provided for by s. 28, *infra*, p. 250.

As to the site value of copyholds, see s. 40, *infra*, p. 298.

The "original site value of the land" has to be deducted from the site value on the occasion on which increment value is to be collected, as ascertained under s. 2 (2), in order to ascertain the increment value upon which the duty is assessed, *vide supra*, p. 77. For this purpose it is to the interest of the owner to have the original site value as high as possible, of the Crown to have it as low as possible. Sub-s. (3) of s. 2 also contains references to "original site value."

Undeveloped land duty is assessed upon the site value of undeveloped land, s. 16 (1) (3), *supra*, p. 138. For this purpose it is to the interest of the owner to have the site value as low as possible,

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Besides the deductions admissible under s. 25 (4), a deduction under s. 40 (1) (a), *infra*, p. 298, has to be made in ascertaining the site value of land subject to customary freeholds, and to certain copyholds.

Deductions to be made in ascertaining Assessable Site Value : sub-s. (4).—The decision of the Commissioners in respect of any of these deductions is the subject of appeal under s. 33 (1), *infra*, p. 266. As to the recording of these deductions, see s. 30, *infra*, p. 255, and as to the time for claiming them, see s. 12, *supra*, p. 121. The deductions allowed in sub-clauses (a), (b), (c), (d), (e), will now be discussed *seriatim* under those letters.

(a) The same amount as is to be deducted for the purpose of arriving at full site value from gross value, is to be deducted under sub-s. 4 (a), from the total value. This amount is calculated under sub-s. 2, see note on the "full site value," *supra*, p. 217.

(b) The deductions allowed under sub-s. (4) (b) are, in amount, to be equal to any part of the total value proved to the Commissioners to be directly attributable to the matter mentioned, and not necessarily to be equal to any actual sums spent on those matters. It is difficult to appreciate the effect of the word "directly," which does not appear in the somewhat similar context of s. 13 (2), *supra*, p. 122.

There appears to be nothing to limit the time within which the works must have been executed or the expenditure incurred, in order that the deduction should be allowed. The works need not necessarily have been executed, nor the expenditure incurred, upon the land to be valued. Even if executed or incurred elsewhere, they may have the effect of directly increasing the total value of that land. For example, a sea-wall may have the effect of reclaiming land situate at some distance from it; a road may give access to land although it does not lie upon the land, and so on. The fact that the works must have been executed, or the expenditure incurred, by or on behalf of or solely in the interests of any person interested in the land, however, prevents any deduction in respect of value due to works executed by adjoining owners or by public authorities or by uninterested benefactors. Where works have been carried out by Commissioners of Sewers or Drainage Boards, they will not secure the benefit of this provision to the owner of the land improved in value, unless the works have been done under such conditions in pursuance of the powers of those bodies, that the expense of the works can be described as expenditure of a capital nature incurred *bonâ fide* by or on behalf of any person interested in the land benefited. This might possibly be said where the works have been paid for out of, *e.g.* a special rate imposed under the Land Drainage Act, 1861, s. 38. The words used appear, however, to be wide enough to give the benefit of the provision where the works have been executed or the

expenditure has been incurred by a predecessor in title of the owner, and even by a tenant or former tenant, provided that his interest is within the definition of "interest" in s. 41, *infra*, p. 302, and by any other person whose interest comes within that definition. As to the words "*bonâ fide*," see note *supra*, p. 151.

The making and laying out of roads, streets, and sewers, the constructing of sea-walls, sluices and drains, any works of reclamation, fencing and walling, the installation of a water supply, all appear to be instances of "works" within the purview of the provision.

"Expenditure of a capital nature (including any expenses of advertisement)." The words here set out would appear to allow the deduction of all such expenditure of a capital nature for the purposes specified as cannot be said to be expenditure on works executed by or on behalf of the person interested; and, *inter alia*, of expenses recovered under s. 150 of the Public Health Act, 1875, or under s. 12 of the Private Street Works Act, 1892, or under corresponding provisions of local Acts, if recovered from a "person interested in the land," within the meaning of the present sub-section. As to these provisions, see the note "Expenditure on roads and sewers." There may also perhaps be an allowance for expenditure such as is discussed, *supra*, in connection with Commissioners of Sewers and Drainage Boards. The expenses of advertisement would appear to include the expenses of advertising sales or leases of land for building, etc.

The phrase "expenses incurred . . . in respect of capital expenditure" appears in the Education Act, 1902, 2 Edw. 7, c. 42, s. 18 (1) (c), and has been there held to mean "capital expenditure in the accountant's sense of the word—money which cannot be properly said to be expended on maintenance nor on improvement by means of maintenance only, but expenditure which would be properly put down to capital" (*R. v. Wraith*, [1907] 2 K. B. 756, *per* Lord ALVERSTONE, C.J., at p. 761). "The meaning of the words 'capital expenditure' is not expenditure of money taken from capital, but the laying out of money which, upon its being laid out, becomes in itself capital. That is irrespective of the source from which the money comes," *per* DARLING, J., at pp. 762, 763. The passages cited apply, it is submitted, with even greater force to the phrase "expenditure of a capital nature" in the present provision (cf. also *English Crown Spelter Co. v. Baker* (1908), 5 Tax. C. 327; 99 L. T. 353).

"*Building land*" appears to mean land fit for buildings to be erected upon it, and not to be confined to land actually built upon. The words, "business, trade, or industry" have been discussed *supra*, p. 148. "Agriculture" is defined in s. 41, *infra*, p. 304. See also the note on "Other than agriculture," *supra*, p. 152.

The paragraph following after sub-clause (e), and beginning "where any works," etc., operates as a proviso to sub-clause (b). It would include such a case as where low-lying land near the sea has been reclaimed, say, for pasture by means of walls, drains, and sluices, and where by reason of the growth of a neighbouring seaside town those works are found to have actually improved the

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There is no allowance for works executed or expenditure incurred to improve the value of the land for agricultural purposes, unless the works or expenditure have actually improved the value in the manner described in that paragraph. Nor would there appear to be an allowance in respect of works executed or expenditure incurred in forming, levelling, or embanking land used for such purposes as those for which playing fields are used, unless where such fields are kept for the purposes of business, trade, or industry.

(c) As to the way in which the amount of the deduction under sub-s. (4) (c) is calculated, see note on (b). The "appropriation . . . for the use of the public" here spoken of, does not appear to mean that the land in question must have been dedicated as a highway, or otherwise appropriated to the use of the public for ever. "Person interested in the land," see definition of interest in relation to land, s. 41, *infra*, p. 302. As to "open spaces," see note, *supra*, p. 161.

(d) As to the way in which the amount of the deduction under sub-s. (4) (d) is calculated, see note on (b), *supra*. Under (d) the expenditure need not necessarily have been incurred by a person interested in the land, but such will of course usually be the case.

Redemption of Land Tax.—This may be carried out under the following statutes: Land Tax Redemption Act, 1801, 42 Geo. 3, c. 116; 1805, 45 Geo. 3, c. 77, s. 1; 1810, 50 Geo. 3, c. 58, s. 2; 1813, 53 Geo. 3, c. 123; 1814, 54 Geo. 3, c. 173; 1817, 57 Geo. 3, c. 100; 1838, 1 & 2 Vict. c. 58; Land Tax Redemption (Investment) Act, 1853, 16 & 17 Vict. c. 90, s. 8; Land Tax Redemption (No. 2) Act, 1853, 16 & 17 Vict. c. 117; Settled Estates Act, 1877, 40 & 41 Vict. c. 18, s. 34; Finance Act, 1896, 59 & 60 Vict. c. 28, ss. 31–36.

Fixed Charge: Defined in s. 41. A quit-rent, chief-rent, rent-charge, or other annual sum issuing out of land may be redeemed in the manner provided by s. 45 of the Conveyancing Act, 1881, at the desire of the owner of the land or any person interested therein. This section does not apply to tithe rentcharge, or to any sum issuing out of land not being perpetual. Tithe rentcharges are redeemable under the Tithe Commutation Acts, see especially 9 & 10 Vict. c. 73; 23 & 24 Vict. 93, ss. 32–39; 41 & 42 Vict. c. 42, ss. 3, 4, 5; 48 & 49 Vict. c. 32; 49 & 50 Vict. c. 54, ss. 5, 6. A rentcharge created under the Copyhold Act, 1894, may be redeemed under s. 39 of that Act, and under s. 2, any quit-rent, free rent, or other manorial incident may be extinguished at the desire of the lord or tenant (as defined in s. 94) in the same way as a copyhold is enfranchised. The release of lands from rent-service, rentcharge, or chief or other rent, under the Lands Clauses Act, 1845, is provided for in ss. 115–118 of that Act. A rentcharge under the Public Money: Drainage Act, 1846 (9 & 10 Vict. c. 101) is redeemable under s. 45. There is nothing to confine the operation of the phrase now being considered to a redemption under statutory provision; it appears to apply equally to redemption by private contract.

Enfranchisement of Copyhold Land or Customary Freeholds. see Copyhold Act, 1894 (57 & 58 Vict. c. 46); and as to enfranchisement of copyholds for the purposes of redemption of land tax, see 42 Geo. 3, c. 116, ss. 71, 76, 84. For the special provisions in this Act as to copyholds and customary freeholds, see s. 40, *infra*, p. 298.

Covenants and Agreements restricting the Use of the Land. which may be taken into account in ascertaining the total value of the land; see sub-s. (3), and note on deductions to be made in ascertaining total value, *supra*, p. 220.

Goodwill.—The latest authoritative definitions of goodwill are those given by the House of Lords in *Inland Revenue v. Muller's Margarine*, [1901] A. C. 217, especially that of Lord LINDLEY, at p. 235, where he says, "Goodwill regarded as property has no meaning except in connection with some trade, business, or calling. In that connection I understand the word to include whatever adds value to a business by reason of situation, name and reputation, connection, introduction to old customers, and agreed absence from competition, or any of these things, and there may be others . . . That in some cases and to some extent goodwill can and must be considered as having a distinct locality, is obvious . . . The goodwill of a public-house or of a retail shop is an instance. The goodwill of a business usually adds value to the land or house in which it is carried on, if sold with the business; and so far as the goodwill adds value to land or buildings, the goodwill can only be regarded as situate where they are. In such a case the goodwill is said to be annexed to them." Goodwill may therefore arise from (among others) two sources, first, from the situation of the premises where the business is carried on, as in the case of a public-house situate at the corner of two streets (cf. *Cartwright v. Sculcoates Union*, [1900] A. C. pp. 154, 155; *Potter v. Inland Revenue* (1854), 23 L. J. Ex., p. 348); this is sometimes called "local goodwill"; and secondly, from the reputation or connection of the person carrying on the business (*Ginesi v. Cooper* (1880), 14 Ch. D. 596; *Trego v. Hunt*, [1896] A. C. 7; *Inland Revenue v. Angus* (1889), 23 Q. B. D. p. 596, *supra*, p. 67; *Benjamin Brooke v. Inland Revenue*, [1896] 2 Q. B. 356; this is sometimes called "personal goodwill." Goodwill has, however, often been held to be so closely connected with premises as to pass with them upon a mortgage, e.g. *Chisum v. Dewes* (1828), 5 Russ. 29; *King v. Midland Rail. Co.* (1868), 17 W. R. 113; *Pile v. Pile* (1876), 3 Ch. D. 36, *infra*, p. 261; *Ex parte Punnett* (1880), 16 Ch. D. 226; JESSEL, M.R., considered that the goodwill of a public-house was nothing else than "the mere habit of the customers resorting to the house" (16 Ch. D. p. 233). But in *West London Syndicate v. Inland Revenue*, [1898] 2 Q. B. 507, the goodwill of a hotel was held to be severable from the business premises, for the parties had in fact severed it by selling the goodwill apart from the premises, see *Muller's Margarine v. Inland Revenue*, [1900] 1 Q. B. pp. 321, 322. However, in the *Muller's Margarine* case, [1901] A. C. 217, the House of Lords held that an agreement made in England for the sale of the vendor's factory in Germany together with the goodwill of his manufacturing business was an agreement for the sale of "property locally situate out of the United Kingdom" within the meaning of s. 59 (1) of the

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The above cases are discussed from another point of view in Ryde on Rating, 2nd ed., pp. 467-471.

A yearly sum agreed to be paid for goodwill, fixtures and fittings has been held not to be a "rent" within 8 Anne. c. 14, s. 1 (*Cox v. Harper*, [1910] W. N. 34; 26 T. L. R. 264, *infra*, p. 262).

Any other Matter which is Personal to the Owner, Occupier, or Other Person interested for the Time being in the Land.—"Owner" and "interest in land" are defined in s. 41, *infra*, p. 302. The "time being" apparently refers to the time with respect to which the assessable site value is being ascertained; see note headed "at the time," *supra*, p. 205.

Personal matters of the kind referred to will be found discussed in the notes on "Special adaptability" and "Owner and tenant taken into consideration," *supra*, pp. 209-211.

(e) The deductions allowed under sub-s. (4) (e) are not to be calculated as under (b), (c), and (d), but are estimated sums which in the opinion of the Commissioners it would be necessary to expend for the purposes specified. Note that the things to remove which the expenditure is to be estimated must satisfy both the conditions stated; they must be things of which the land is to be taken to be divested for the purpose of arriving at the full site value (see sub-s. (2) and notes, *supra*, pp. 217 *sqq.*), and they must be things of which it would be necessary to divest the land for the purpose of realising its full site value. There does not, however, appear, to be much difference in effect between these two qualifying phrases. Care must be taken in ascertaining the full site value so that a deduction on this account is not allowed twice over.

There is apparently nothing in this provision enabling the Commissioners to reduce the sum necessary to be expended by the price which the things would fetch if removed from the land.

Note that there is no allowance anywhere for expenditure which has been made *bonâ fide* for improving the value of the land but which does not increase the total value at the time in respect of which the valuation is made, e.g. expenditure to improve the land for agriculture, which does not happen to improve it also for the purposes specified in sub-s. (4) (b).

26.—(1) The Commissioners shall, as soon as may be after the passing of this Act, cause a valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land, and in the case of agricultural land the value of the land for agricultural purposes where that value is different from the site value. Each piece of land which is under separate occupation, and, if the owner so requires, any part of any land which is under separate occupation, shall be separately valued, and the value shall be estimated as on the thirtieth day of April nineteen hundred and nine.

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land for
purposes of
Act.

(2) Any owner of land and any person receiving rent in respect of any land shall, on being required by notice from the Commissioners, furnish to the Commissioners a return containing such particulars as the Commissioners may require as to the rent received by him, and as to the ownership, tenure, area, character, and use of the land, and the consideration given on any previous sale or lease of the land, and any other matters which may properly be required for the purpose of the valuation of the land, and which it is in his power to give, and if any owner of land or person receiving any rent in respect of the land is required by the Commissioners to make a return under this section, and fails to make such a return within the time, not being less than thirty days, specified in the notice requiring a return, he shall be liable to a penalty not exceeding fifty pounds to be recoverable in the High Court.

(3) Any owner of land may, if he thinks fit, furnish to the Commissioners his estimate of the total value or site value or both of the land, and the Commissioners, in making their valuation, shall consider any estimate so furnished.

The Valuation directed to be made under this section does not become finally settled until the various steps have been taken which are directed by s. 27, *infra*, p. 240. The valuation is to be made as soon as may be after the passing of the Act, but no time is limited for its completion; and it would appear, therefore, that the Com-

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missioners can make their valuation under s. 26 of any particular piece of land at any time, so long as that land has not already been valued under this section as part of some other piece of land. As to the powers of the Commissioners to review the valuation of any piece of land which they have already valued under s. 26, see s. 27 (3), *infra*, p. 241.

The values shown shall be estimated as on 30th April, 1909. In no case can the valuation of any land be actually made within a year of that date; consequently, in every case, the values will have to be estimated as at a time at least twelve months before the making of the estimate. In many cases, no doubt, the interval will be far greater.

Particulars of the valuation made under this section are to be recorded under s. 30 (1), *infra*, p. 255; see also s. 30 (2).

The Passing of this Act.—This Act received the Royal assent on the date shown on p. 58.

All Land in the United Kingdom.—"Land" is defined in s. 41, *infra*, p. 301. Note that all land as so defined is to be included in the valuation, although it may be exempt from some or all of the duties imposed under Part I., by virtue of the provisions of the ss. 7, 8, 9, 11, 14, 17, 18, or under ss. 35, 37, 38, and although, for one cause or another, its total or site value may in fact be *nil*; and although its total or site value may have to be ascertained on some other basis than those laid down in s. 25, as in the case of statutory companies, s. 38, *infra*, p. 287, and in the case of copyholds and customary freeholds, s. 40, *infra*, p. 298.

Land owned by the Crown or for Crown Purposes.—The Crown, not being mentioned in Part I. of the Act, except in ss. 10, 17 (3) (b), 37 (1), is not in general bound by its provisions, cf. *e.g.* *R. v. Cook* (1790), 3 T. R. 519; *Coomber v. Berks. JJ.* (1883), 9 A. C. 61; *Hornsey U. D. C. v. Hennell*, [1902] 2 K. B. 73; *Cooper v. Hawkins*, [1904] 2 K. B. 164, and cf. s. 10, *supra*, p. 117. It is submitted, therefore, that, although s. 26 directs a valuation of all land in the United Kingdom, land owned by the Crown cannot lawfully be included in that valuation. But the view may be taken that, as inclusion in that valuation does not of itself impose any liability, it is possible to include Crown lands in that valuation without affecting the rights of the Crown, and that therefore such lands may lawfully be included, in spite of the Crown not being expressly named. It seems clear, however, that the Crown cannot be called upon to furnish any return under sub-s. (2). The above remarks are intended to apply to lands owned by any servant of the Crown for the purposes of the Crown, and to any servant so owning land; and not only to lands owned by, or to the servants of, departments of state, like the Admiralty, the War Office, the Post Office, the Commissioners of Woods and Forests; but also to other persons who own and use lands "for the purposes of the administration or those purposes of the Government which are, according to the theory of the Constitution, administered by the Sovereign," *per* Lord BLACKBURN, in *Coomber v. Berks. JJ.*, 9 A. C. at pp. 69, 70; see also *Jones v. Mersey Docks* (1865), 11 H. L. C. 443, at pp. 464, 504, 508. It must be admitted,

however, that the language of s. 10, *supra*, p. 117, which treats land "held by or in trust for His Majesty or any department of Government" as being outside the purview of the Act is, as far as it goes, against the view here submitted that land held for the purposes of the Crown, but not by what is ordinarily called a Government department, is also outside the purview of the Act.

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If, however, the view suggested is correct, it appears that such land as the site of an assize court, or a police station, owned by county justices (cf. *Coomber v. Berks. JJ.*, *supra*; but see *Middlesex County Council v. St. George's Union*, [1897] 1 Q. B. 64, where the building was used for other purposes also), or as land acquired and used by a volunteer corps for military purposes and vested in the Commanding Officer (cf. *Hornsey U. D. C. v. Hennell*, *supra*), cannot be included in the valuation. At any rate, it is submitted that the owners of such lands, if within the description quoted above from *Coomber v. Berks. JJ.*, are not bound to furnish returns under sub-s. (2).

If the above view is correct, it would appear to apply also to the periodical valuation of "undeveloped land" which is to be made under s. 28, *infra*, p. 250.

Powers of the Commissioners.—Certain subsidiary powers are given to the Commissioners to help them in carrying out valuations by s. 31, *infra*, p. 256. See also note headed "the valuation," *supra*, p. 229.

Values to be Shown.—In the valuation there are to be shown the total value ascertained on the basis laid down in s. 25 (3), *supra*, p. 200, and the site value on the basis laid down in s. 25 (4), *supra*, p. 200; as well as, in the case of agricultural land, the value of the land for agricultural purposes where that value is different from the site value. The Act does not make it clear upon what principles the value for agricultural purposes is to be ascertained (Commons Debates, Official Report, 1902, Vol. 12, cols. 747-751). But it is submitted that the value for agricultural purposes should be ascertained as nearly as possible upon the principles laid down in s. 25 (4) for ascertaining the site value, except that the land is to be considered as not being likely to realize in the open market any amount, other than that which it would realize for agricultural purposes; and that all the deductions allowed by s. 25 (4) should be made. As to the meaning of "agriculture" and "agricultural land" see s. 41, *infra*, p. 304. The value of agricultural land for agricultural purposes regulates exemptions from increment value duty, s. 7, p. 104, and from undeveloped land duty, s. 17 (2), *supra*, p. 155. The comparison with "site value" in s. 17 (2) appears to support the view above indicated; but there is no such comparison expressed in s. 7, see notes thereto, *supra*, p. 105. It is submitted, that "value for agricultural purposes" does not in s. 26 include value for sporting purposes or for other purposes dependent upon its use as agricultural land, as it may do for certain purposes under s. 7. In s. 7, the words "value for agricultural purposes only" are qualified by the words, "market" and "at the time." It is submitted, however, that the absence of the latter words from s. 26 does not militate against the view above expressed.

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As to the meaning of "total value" and "site value," and as to the use to which these values are put, see the notes headed, "The total value of land," *supra*, p. 220, and "Assessable site value," *supra*, p. 223.

The "site value on the occasion on which increment value duty is to be collected," ascertained according to s. 2 (2), *supra*, p. 76, is not to be shown in the valuation made under s. 26. The Commissioners are not obliged by this section to specify the deductions made under s. 25 (*supra*, p. 200), nor the amount of those deductions; but under s. 30, *infra*, p. 255, a record is to be kept of all deductions allowed in determining any value, and it is submitted that as the Commissioners must determine the total value and site value for the purposes of the valuation made under the present section, even before it is finally settled under s. 27, the "record" should show the deductions just referred to. All the values shown in the valuation are to be estimated as on 30th April, 1909; see note "at the time," *supra*, p. 205. As to the adoption of the values shown in the valuation as the original total value and original site value respectively, see s. 27, *infra*, p. 240. As to copyholds, etc., *vide infra*, p. 300. As to the value of minerals, *vide infra*, p. 239.

Separate Occupation.—Under the 43 Eliz. c. 2, the poor rate is levied upon the occupiers of lands, etc. And consequently, "in the decisions upon that statute the question was whether there was a separate occupation," *per* JESSEL, M.R., in *Att.-Gen. v. Mutual Tontine, etc.* (1876), 1 Ex. D. 469, at p. 478. That was a case upon inhabited house duty, and the cases upon poor rate were held not to be there in point. It is submitted that the cases decided upon poor rate in this connection are, however, in point in elucidating the phrase as it appears in the present Act, and in the following notes an attempt is made to show the main principles which determine separate occupation for the purposes of poor rate. The matter is exhaustively treated in Ryde on Rating, 2nd Edn., Chapter II. The decisions upon inhabited house duty, which often turn upon words like "houses," "tenements," and so on, in particular enactments, are not generally in point; but those decided upon rule 2 of Sched. B. to the House Tax Act, 1808, and set out *supra*, p. 108, may perhaps be consulted.

Certain cases upon the franchise are also cited, *infra*, p. 237, as laying down principles which may be useful; but the circumstances arising under the present Act are not often likely to be very similar to those upon which the cases referred to were decided.

Where any piece of land is in separate occupation, the owner may have it divided as he requires for the purpose of ascertaining the value, *vide infra*, p. 238.

Occupation Generally.—For poor rate purposes, a separate occupation must be exclusive, must not be the subject of another person's control, and must have an element of permanence; but it need not be founded on title.

"Occupation includes possession as its primary element, but it also includes something more. Legal possession does not of itself constitute an occupation. . . . A transient temporary holding of land is not enough to make the holding rateable. It must be an occupation which has in it the character of permanence; a holding

as a settler, not as a wayfarer" (*R. v. St. Pancras Assessment Committee* (1877), 2 Q. B. D., *per* LUSH, J., at pp. 588, 589).

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Legal possession, and *a fortiori* rateable occupation, cannot exist without physical control. An intention to occupy is a necessary ingredient of rateable occupation, and such occupation may continue so long as there is an intention to assume or resume possession, even though there is no evidence of the physical presence of the occupier or of chattels belonging to him (*R. v. Melladew*, [1907] 1 K. B. 192; *Borwick v. Southwark Corporation*, [1909] 1 K. B. 78). Where two persons use a hereditament, the rateable occupier is the person who has the physical control of the hereditament. See the cases cited, *infra*, p. 235. "As regards the interest of the person who is to be rated, 'it must be an interest in himself exclusively. . . . The Courts have not meant by the term 'exclusively' that the interest may not be determined on certain terms and conditions, but merely that the person so occupying should have the right unattended by a simultaneous right of any other person in respect of the same subject-matter" (*Cory v. Bristow* (1877), 2 App. Cas., *per* Lord HATHERLEY, at p. 276).

"Exclusive occupation does not mean that nobody else has any rights in the premises. . . . If a person has only a subordinate occupation subject at all times to the control and regulation of another, then that person has not occupation in the strict sense for the purposes of rating, but the rateable occupation remains in the other, who has the right of regulation and control" (*Holywell Union v. Halkyn Drainage Co.*, [1895] A. C., *per* Lord DAVEY, at p. 134).

Occupation must be permanent, and not merely intermittent. What period of occupation is necessary to establish separate rateability is a question of fact in each case. Thus, where a contractor had erected temporary huts for the accommodation of his workmen during the construction of a railway, he was held rateable, and ALVERSTONE, C.J., said, "If there is exclusive possession or occupation of a portion of land for a sufficient time . . . there is rateability" (*Mitchell Bros. v. Worksop Union* (1904), 69 J. P. 53).

A good title is not material to separate occupation. "There may be occupation without even the existence of the relation of tenant towards the owner of the property. And I think land may be occupied for the purpose of and in connection with the enjoyment of an easement in such a manner as to make the person so occupying liable to be rated" (*per* Lord HERSCHELL, L.C., in *Holywell Union v. Halkyn Drainage Co.*, [1895] A. C., at p. 121). See notes on "easements." "Liability to rates is not a matter of title" (*ibid.*, *per* Lord MACNAGHTEN (1895), A. C., at p. 127). Even a trespasser may be rateable (*per* Lord CAMPBELL, C.J., in *Forrest v. Greenwich Overseers* (1858), 8 El. & Bl., at p. 897). But evidence of title is frequently looked at by the courts in ascertaining where the rateable occupation lies, for "it is necessary in cases of apparent joint occupation to consider what degree of right each party may have in the premises" (*Holywell Union v. Halkyn Drainage Co.*, [1895] A. C., *per* Lord DAVEY, at p. 134). For examples of other cases in which the courts have entered upon such an inquiry, see those cited at p. 235, *infra*.

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What appears to be a Mere Easement may constitute a Separate Occupation.—A person cannot be rated in respect of an easement which does not in any sense carry with it the exclusive occupation of land; thus, a person who has a mere wayleave, or right of carrying coals over land occupied by another, is not rateable (*R. v. Jolliffe* (1787), 2 T. R. 90); and a company was held not rateable, which used a towing path, not vested in it, by the side of a natural river (*Manchester, Sheffield and Lincolnshire Rail. Co. v. Doncaster Union* (1894), 71 L. T. 585). But where the grantee of a wayleave to carry coals takes possession of the land over which the wayleave is granted, he is rateable therefor (*R. v. Bell* (1798), 7 T. R. 598). "The right of the [person rated] may be an easement or incorporeal right; but the easement may be of such a character as requires the occupation of land for its exercise, and confers upon the [person rated] a right to occupy land during its continuance. According to a long course of authority, the occupation of land under such circumstances is sufficient for rating purposes, though unaccompanied by ownership of any portion of the soil" (*Holywell Union v. Halkyn Drainage Co.*, [1895] A. C., per Lord DAVEY, at pp. 131, 132, *supra*, p. 233).

It is often extremely difficult to say whether a given use of land amounts to a separate occupation or only to an easement: see the remarks of Blackburn, J., in *Roads v. Trumpton Overseers* (1870), L. R. 6 Q. B. 56, at p. 62. Perhaps the most conspicuous example of the rateability of what might at first appear to be a mere easement is the case of a tramway. A tramway company has in reality more than a mere easement or right to go across land or drive over it; the tram rails occupy a portion of the soil, and the company has the exclusive right to use the rails with flange wheels; therefore it has the exclusive occupation of land (*Pimlico Tramway Co. v. Greenwich Union* (1873), L. R. 9 Q. B. 9). It is upon a similar principle that a water company is held to be rateable in respect of its mains (*R. v. Chelsea Waterworks Co.* (1833), 5 B. & Ad. 156; *R. v. West Middlesex Waterworks* (1859), 1 El. & El. 716; but cf. *Chelsea Waterworks v. Bowley*, and the cases cited in contrast therewith, *supra*, p. 221). This distinction is also illustrated by the different decisions upon somewhat similar subject-matters in *Forrest v. Greenwich Overseers* (1858), 8 El. & Bl. 890; *Watkins v. Milton-next-Gravesend* (1868), L. R. 3 Q. B. 350; *Cory v. Greenwich Churchwardens* (1872), L. R. 7 C. P. 499; *Cory v. Bristol* (1877), 2 App. Cas. 262.

Some of the cases cited under "Land used by two persons," *infra*, p. 235, will also serve as illustrations of this matter.

A mere easement being an incorporeal hereditament is not included in the definition of "land" in s. 41, and is not therefore to be valued under s. 26. But it is submitted that there may be many cases where a piece of "land" as defined in s. 41 is in separate occupation by reason of the existence of what appears to be a mere easement, upon the principles laid down in the rating cases just cited (cf. *Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416, *supra*, p. 222. Many such pieces of land may be held by bodies exempt from taxation under Part I.; but they will nevertheless have to be included in the valuation made under s. 26, *vide* p. 230.

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Structural Severance not necessary to Separate Occupation.—A set of premises which would appear *prima facie* to be a single rateable hereditament may often prove to consist of various parts, each of which is in a separate rateable occupation, like the sets of rooms found to be separately rateable in *R. v. St. George's Union*, *infra*, p. 235. See also *R. v. Ponsonby* (1842), 3 Q. B. 14; *Showers v. Chelmsford Union*, [1891] 1 Q. B. 339. In order that the parts of the premises should be thus separately rated, it is not necessary that there should be any structural severance between the parts; and where there were two tenants in a house consisting of two storeys connected by a staircase, and each tenant had the exclusive occupation of the rooms of one storey, but they used the front garden, back yard, and water-closet jointly, it was held that the tenants were not properly rated as joint occupiers, but must each be rated separately in respect of his own dwelling; and that, even though they had the joint use of the internal staircase, that would not make them jointly rateable (*Allchurch v. Hendon Union*, [1891] 2 Q. B. 436).

Land used by Two Persons: Person having Control has Separate Occupation.—"There are many cases where two persons may, without impropriety, be said to occupy the same land, and the question has sometimes arisen which of them is rateable. Where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive he does not cease to be liable to the rate, nor does the other become so. A familiar illustration occurs in the case of a landlord and his lodger. Both are in a sense in occupation; but the occupation of the landlord is paramount, that of the lodger subordinate," *per* Lord Herschell, L.C., in *Holywell Union v. Halkyn Drainage Co.*, [1895] A. C. at p. 126, *supra*, p. 233.

This principle has been applied by the Courts to various kinds of property in the following cases decided in connection with poor rates:—

Blocks of buildings divided into sets of rooms used as residences and as offices; held that the lessee of each set was separately rateable to the poor in respect of it. Each set had an outer door of its own; the outer door of each block was kept locked at night; a porter hired by the lessors resided on the premises and had a key to each set; the porter, however, attended to the sets as the servant of the respective lessees, and did not control the outer door on behalf of the lessors; and the lessors provided gas for the staircases, halls and passages, and water for the whole building (*R. v. St. George's Union* (1871), L. R. 7 Q. B. 90).

A house in which the lessee had his office but in which he allowed to the Board of Inland Revenue (by an agreement which contained words of demise) the exclusive enjoyment of five rooms as offices, covenanting to supply the Board with fire, gas, and attendance; the whole house held to be in the occupation of the lessee (*Smith v. St. Michael's Cambridge* (1860), 3 E. & E. 383; 30 L. J. M. C. 74). As to increment value duty in the case of flats, etc., see s. 11, *supra*, p. 119.

Stables used by coal dealers at a railway station, held to be in the occupation of the railway company, which retained the control

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of the stables by stipulating that the use of the stables should be subject to the company's regulation (*London and North Western Rail. Co. v. Buckmaster* (1874), L. R. 10 Q. B. 70, 444).

A berth in a dock with the adjoining quay space, appropriated by the harbour board to a canal company subject to the regulations of the board, held not to be in the separate occupation of the canal company (*Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852; see also *Allan v. Liverpool Overseers*, *Inman v. Kirkdale Overseers* (1874), L. R. 9 Q. B. 180).

A tunnel used for the drainage of mines, held to be in the rateable occupation of the drainage company in spite of certain rights being reserved by the owner (*Holywell Union v. Halkyn Drainage Co.*, [1895] A. C. 117; see pp. 233, 235, *supra*).

Cemeteries in which plots of land were appropriated to individuals for family vaults, held to be wholly in the occupation of the cemetery company (*R. v. St. Mary Abbots* (1840), 12 Ad. & E. 824, where the company only granted an easement; *R. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515, where the plots were conveyed in fee; and cf. *Winstanley v. North Manchester Overseers*, [1910] A. C. 7).

Bookstalls at a railway station, held not to be in the separate occupation of the booksellers, who were only allowed access to the station at reasonable times and for limited purposes—the bookstalls having been erected with the approval of the railway company's engineer and being moveable at the company's pleasure (*Smith v. Lambeth Assessment Committee* (1882), 10 Q. B. D. 327).

Refreshment rooms at an exhibition, held not to be in the separate occupation of the refreshment contractors, who did not have the keys of the refreshment rooms and were subject to the regulations of the managers of the exhibition upon such matters as the method of bringing in provisions (*R. v. Morrish* (1863), 32 L. J. M. C. 245).

A bridge, held to be in the occupation of the lessee of the tolls, though the lessors reserved the right to swing the bridge open for vessels to pass, and the lessee was restricted in various other ways as to his use of the bridge (*Percy v. Hall* (1903), Ryde & Konstam's Rat. App. (1894–1904), 319).

Gas mains laid and owned by a local board, but used only for the supply of gas by a town council, held not to be in the separate occupation of the council (*Mayor, etc., of Southport v. Ormskirk Union*, [1894] 1 Q. B. 196).

A line of water pipes owned by a city corporation, and used for the supply of water to a district council, the water supplied being measured by a meter at the lower end of the line of pipes, held to be in the occupation of the corporation (*Mayor, etc., of Liverpool v. Birkenhead Union* (1905), 70 J. P. 146).

Telegraph wires appropriated to the use of a private company by the Postmaster-General, who did not, however, covenant that any definite wires should be so appropriated, and who might therefore change the wires as he thought fit, held not to be in the separate occupation of the company (*Paris and New York Telegraph Co. v.*

Penzance Union (1884), 12 Q. B. D. 552; as to telegraphs, see also *Electric Telegraph Co. v. Salford Overseers* (1855), 11 Ex. 181).

Telephone wires attached to roofs of houses by spikes, etc., held to be in the separate occupation of the telephone company, although the company could only obtain access to the roofs by the permission of the occupiers of the houses (*Lancashire Telephone Co. v. Manchester Overseers* (1884), 14 Q. B. D. 267).

Posts, cables and other equipment by which electric power was supplied to a tramway company by an urban authority, held not to be in the separate occupation of the company (*New St. Helen's Tramways Co. v. Prescott Union* (1904), Konstam's Rat. App. (1904-1908), 150).

Appliances for distribution of sewage situated upon a sewage farm, which was in the occupation of a tenant, held not to be in the separate occupation of the drainage board (*Stourbridge Main Drainage Board v. Seisdon Union* (1902), 66 J. P. 372).

Land used for the excavation of coprolites, held to be in the separate occupation of the person who dug out the coprolites under an agreement with the freeholders; there were no words of demise in the agreement (*Roads v. Trumpington Overseers* (1870), L. R. 6 Q. B. 56, *supra*, p. 234).

In all these cases the court has looked at the conditions (whether express or implied) of the contract between the party giving and the party receiving the use of the hereditament, in order to see whether by the nature of the contract it is intended that the person using the hereditament is to have exclusive possession of it.

Franchise Cases.—By s. 5 of the Parliamentary Registration Act, 1878, 41 & 42 Vict. c. 26, the term "dwelling-house" in the Representation of the People Act, 1867, 30 & 31 Vict. c. 102, "shall include any part of a dwelling-house where that part is separately occupied as a dwelling," and upon this provision it has been held that "where the owner of the house does not let the whole of it, but retains a part for his own residence, and resides there, and where he does not let out the passages, staircase, and outer door, but gives to the 'inmates' . . . merely a right of ingress and egress, and retains to himself the general control with the right of interfering . . . such owner is the occupying tenant of the house, and the inmate, whether he has or has not the exclusive use of the room, is a lodger. . . . Where the landlord lets out the whole of the house into separate apartments, and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress and egress over the lower passages, but parts entirely with the whole legal ownership, for the term demised, and retains no control over the house . . . the inmates are occupying tenants, and are capable of being rated as such. . . . On the other hand, suppose the landlord does not demise the whole of the house, but everything in it that can be demised, except the staircase and passages, etc., as to which he gives the inmates the right of ingress and egress, but exercises no control over, and does not reside in the house, . . . the inmates are occupying tenants;" the fact that the landlord executes the repairs, or pays the rates and taxes, was held to be immaterial

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Requisition by Owner for Separate Valuation.—"Owner" is defined in s. 41, *infra*, p. 303. The word as used here does not appear to have the wider meaning which is given to it for the purposes of s. 27, *infra*, p. 242. Section 41 also provides for the exercise of the powers of the owner in the case of infants and lunatics. Under s. 26 (1), the owner may require any part of any land which is under separate occupation to be separately valued. The section does not contain any provision limiting the time within which the owner must make the requisition; but it will be advisable to do so at the earliest opportunity. Certainly when it is desired to make such a requisition, the requisition should accompany any return that is made under sub-s. (2.)

The Commissioners are bound to value separately any land (not being in more than one separate occupation) which the owner requires to be so valued. And matters of serious importance with regard to the amount of both total value and site value may often depend upon the question what is the piece of land which has a separate value assigned to it; see notes to s. 25, *supra*, p. 206. This point may also become important with relation to exemptions from undeveloped land duty, especially to that created by sub-s. (1) of s. 17, *supra*, p. 155. The Commissioners have power under s. 29, *infra*, p. 252, to assess duty on or in respect of any such pieces of land as they think fit, quite independently of the way in which land is divided in this valuation, and to apportion original site value for certain purposes; but it will nevertheless be unwise for the owner to neglect the opportunity which the present provision gives him of having the division of land made in a favourable manner in the first instance. The owner cannot require two pieces of land which are actually in separate occupation to be joined together for the purpose of ascertaining value.

Estimates by the Owner.—As to "owner," see the last note. There is no compulsion upon the owner to furnish the estimate described in sub-s. (3), but in most cases it will obviously be to his advantage to do so. It will be wise for the owner if such an estimate is furnished, to reduce his estimate by the amount of all the deductions to which he considers himself entitled; at any rate, as regards those deductions, the admissibility of which depends on proof to the Commissioners under s. 25 (4), *supra*, p. 200, the nature and amount of the deductions should be specified.

If the deductions allowable are not claimed in this estimate, or upon objection made under s. 27, *infra*, p. 241, they cannot be claimed afterwards, whether upon appeal, s. 33 (1). Proviso (a), see note, *infra*, p. 267, or on any occasion on which increment value duty becomes payable, s. 12, *supra*, p. 121.

It is not necessarily in every case to the interest of the owner

that the site value should be put at a low figure; see note on "Assessable Site Value," *supra*, p. 223.

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Minerals.—All minerals are to be treated in this valuation as a separate parcel of land. But minerals not comprised in a mining lease or being worked, are to be treated as having no value as minerals, unless the proprietor (as defined in s. 24, *supra*, p. 193) of the minerals, in the return furnished under this section, specifies the nature of the minerals and his estimate of their capital value, s. 23 (3), *supra*, p. 188. In such a case it would appear that not only the capital value of the minerals, but their total value also should be shown in the valuation; see s. 23 (1). The present section does not expressly provide for any return being made by the "proprietor" of the minerals, where he is a different person from the owner of the land, as defined in s. 41, but, presumably, the intention is that in such a case the Commissioners should require the proprietor, and not the owner, to furnish the return; see note "Valuation," *supra*, p. 190.

Minerals which were, on 30th April, 1909, either comprised in a mining lease or being worked by the proprietor, will not be included in the valuation made under s. 26, s. 23 (3), *supra*, p. 188.

Returns.—"Owner;" *vide supra*, p. 238. "Land" and "Rent" are defined in s. 41, *infra*, p. 301. "Consideration;" see note, *infra*, p. 259. The particulars and information required by the Commissioners will no doubt be set out in the notice requiring the return; and forms in which to make the return will doubtless be supplied. The words "and which it is in his power to give" are presumably intended to apply to all the various heads under which particulars may be required, although the form of the sentence may suggest that they only apply to "other matters." The notice must specify the time *within* which the return is to be made. As to what constitutes sufficient service of such a notice, see s. 31 (4), *infra*, p. 257. The time specified in the notice must not be less than thirty days, and apparently runs from the date when the notice is served on the person required to furnish the return. The words "not less than" apparently exclude both the first and last days from the "time" that may be specified. Similar words in the Companies Act, 1862, 25 & 26 Vict. c. 89, s. 51, were held to have this meaning in *In re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204; and cf. *R. v. Shropshire, JJ.* (1838), 8 Ad. & E. 173; *Mitchell v. Forster* (1840), 12 Ad. & E. 472; *Young v. Higgon* (1840), 9 L. J. M. C. 29; *Robinson v. Robinson* (1861), 30 L. J. (P. M. & A.) 189; *R. v. Turner*, [1910] 1 K. B. 346, 359. Thus, if a notice is served on, say, 31st October, it cannot apparently require the return to be furnished earlier than 30th November.

The return must be made by the person who is required to do so by the notice, even though he claims exemption from duty in respect of the land concerned.

The information in the return should be kept confidential by the Commissioners, but the Act does not expressly enjoin this.

It is submitted, *supra*, p. 230, that no returns need be furnished under this provision in respect of land owned by or for the purposes

Sect. 26. of the Crown. But the express exemptions from taxation conferred by the present Act, whether general or in respect of particular duties, carry with them no exemption from the obligation to make returns imposed by s. 26 (2). As to the return to be made by a statutory company as defined in s. 38, see sub-s. (2) of that section, *infra*, p. 287.

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RETURNS.

As to minerals, *vide supra*.

Penalty on Failure to make a Return.—If a return is made which is merely illusory, or which, through the negligence of the person who is bound to make it, does not contain a correct account of the matters in question which that person has it in his power to give, the penalty will, it is submitted, have been incurred; cf. *A.-G. v. Till*, [1916] A. C. 50. Note that the word “wilfully” does not appear here, as in s. 31 (3), *infra*, p. 257. As to proceedings by the Crown, see note on “Debt due to the Crown,” *supra*, p. 95. The provisions of the Inland Revenue Regulation Act, 1890, referred to in the note on “a stamp duty,” appear to apply to the recovery of this penalty: *supra*, p. 87.

Proceedings cannot of course be taken for the penalty before the return is due, as to which see the last note.

The knowingly making a false statement for the purpose of obtaining any allowance, etc., under this Act is made an offence by s. 94, *infra*, p. 322.

Ascertain-
ment of
the original
site value of
land.

27.—(1) The Commissioners shall cause a copy of their provisional valuation of any land to be served on the owner of the land, and unless objection is taken to the provisional valuation in manner provided by this section, the values shown in the provisional valuation shall be adopted as the original total value and the original site value respectively for the purposes of this Part of this Act.

(2) If the owner considers that the total or site value, as stated in any provisional valuation, is not correct, he may, with a view to an amendment of the provisional valuation, within sixty days of the date on which the copy of the provisional valuation is served, or such extended time as the Commissioners may in any special case allow, give to the Commissioners notice of objection to the provisional valuation, stating the grounds of his objection and the amendment he desires, and if the Commissioners amend the provisional valuation so as to be satisfactory to all persons making objections the total and site value as stated in the amended valuation shall

be adopted as the original total and the original site value for the purposes of this Part of this Act. Sect. 27.

(3) The Commissioners may amend any provisional valuation, whether objected to or not, before it is finally settled, and the amended provisional valuation shall be deemed to be a provisional valuation for the purposes of this section.

(4) If the provisional valuation is not amended by the Commissioners so as to be satisfactory to any objector, that objector may give a notice of appeal under this Act with respect to the valuation, but if no such notice is given the total and site value as stated in the provisional valuation, subject to such amendments as may be made by the Commissioners in order to meet objections, shall be adopted as the original total and the original site value respectively for the purposes of this Part of this Act.

(5) Any person interested in the land, not being an owner, may apply to the Commissioners for a copy of the provisional valuation of the land before it is finally settled, and shall then have the same right of giving notice of objection and of appealing as the owner.

(6) Where the value to be adopted as the original total or the original site value of any land for the purposes of this Part of this Act has not been finally settled at the time when any duty under this Part of this Act becomes leviable, any duty under this Part of this Act shall be assessed as if the values as shown in the provisional valuation, or, if the provisional valuation has been amended by the Commissioners, as shown in the valuation as so amended, were the values adopted as the original total and site values for the purposes of this Part of this Act, and, on the values to be adopted being finally settled, if it is found that the amount which should have been paid as duty exceeds that actually paid, the excess shall be deemed to be arrears of the duty, except so far as any penalty is incurred on account of arrears, and, if it is found that the amount which

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(7) Where a lessee is the owner of the land within the meaning of this Act, this section shall apply as if any person entitled to the fee simple reversion or to a leasehold reversion for a term of years exceeding twenty-one were the owner as well as the lessee.

Provisional Valuation.—The general scheme of s. 27, put shortly, is this:—A copy of the valuation made under s. 26 (called in s. 27 the “provisional valuation”) shall be served on the owner of the land valued. If the owner takes no objection the values shown in the provisional valuation are adopted as the original total value and the original site value of that land, sub-s. (1). If, however, the owner, or any person interested in the land, considers that the provisional valuation is incorrect, he may, subject to certain conditions, give the Commissioners notice of objection. If the Commissioners amend the provisional valuation so as to be satisfactory to all persons making objections, the values shown in the provisional valuation as so amended are adopted as above, sub-ss. (2), (3), (4). If the provisional valuation is not amended by the Commissioners so as to be satisfactory to any objector, that objector may give notice of appeal under s. 33, *vide infra*, p. 266; but if no such notice of appeal is given, the values adopted as last stated become final, s. 27 (4). The words in sub-s. (2) “if the Commissioners amend the provisional valuation so as to be satisfactory to all persons making objections” appear to be satisfied if no notice of appeal within the meaning of sub-s. (2) is given in the time and manner limited by rules made under sub-s. (5) of s. 33, *infra*, p. 268. There is no provision in the Act as to the way in which effect is to be given in the valuation to a decision upon an appeal: this will apparently be provided for in rules to be made under sub-ss. (4) and (5) of s. 33, *infra*, p. 268. Sub-s. (6) of s. 27 provides for assessment of duty pending the final settlement of the valuation. The rights of “persons interested in the land” are provided for by sub-s. (5). And by sub-s. (7), the meaning of the word “owner,” as defined in s. 41, is extended for the purposes of s. 27.

Owing to the manner in which the section was amended in Committee, sub-s. (4) reads at first sight as if it prescribed a fresh stage in the operations of the Commissioners; but this is not really so. Sub-s. (4) merely gives to the unsatisfied objector the power to appeal, and enacts that the provisional valuation as amended under sub-s. (2) shall become final if no notice of appeal is given. The operations of the Commissioners referred to in sub-s. (4) are those which have already been provided for by sub-ss. (2) and (3).

Amendment by the Commissioners of their own motion is provided for by sub-s. (3).

Original Total Value—Original Site Value.—“Total value” and “site value” have been discussed under s. 25, *supra*, p. 199, and under s. 26, *supra*, p. 229. When these have been finally settled at any of the stages at which the provisional valuation becomes final under the present section, they are adopted as the “original total value” and the “original site value” respectively. The figure designated the “original total value” is not itself used for taxation purposes. The original site value (subject in certain cases to substitution under s. 2 (3), *supra*, p. 77, and to apportionment under s. 29 (2), *infra*, p. 252) is subtracted from “the site value on the occasion on which increment value duty is to be collected” (a totally distinct figure) in order to ascertain increment value under s. 2 (1); see note “Increment value,” *supra*, p. 77. The original site value is also the figure upon which undeveloped land duty is assessed (s. 16 (3), *supra*, p. 140), until the first periodical valuation of undeveloped land made under s. 28, *infra*, p. 250, comes into force.

As to total value and site value of copyholds, etc., see s. 40, *infra*, p. 298.

As to original site value in the case of a statutory company, see s. 38 (2), *infra*, p. 287.

There is no express provision in s. 27 for the adoption and final settlement of the value of the land for agricultural purposes where this value is shown separately by virtue of s. 26 (1), *supra*, p. 229. Presumably, however, the procedure laid down in s. 27 will apply to this value also, as if it were the site value of the land.

The Owner of the Land.—“Owner” is defined in s. 41, *infra*, p. 303, but in the cases where that definition makes a lessee “the owner” of the land, the owner for the purposes of the present section includes the persons specified in sub-s. (7) hereof, as well as the lessee, who is in the particular circumstances the “owner” as defined in s. 41. In regard to the copyhold lands dealt with in s. 40 (1), the definition of “owner” in s. 41 is varied by s. 40 (1) (c), *infra*, p. 298. Clearly the persons specified in the last-cited provision are owners for the purpose of the present section; and it appears that in the cases specified in s. 40 (1), the lord of the manor is not an owner for the purpose of the present section.

The provision in s. 41 for the exercise of the powers of the owner in the case of infants and lunatics appears to extend to the powers of the “owner” within the meaning of the present section. As to the meaning of “term of years” in sub-s. (7), see the note so headed under s. 1 (a), *supra*, p. 69. “Land” is defined by s. 41, *infra*, p. 301. The piece of land to be valued separately has been discussed *supra*, pp. 206, 232.

The owner as above described is entitled to have a copy of the provisional valuation of his land served upon him; service in the manner described in s. 31 (4) is sufficient.

The owner, if he considers that the total or site value shown in the provisional valuation is not correct, may give notice of objection to the Commissioners under sub-s. (2). If they do not thereupon amend the provisional valuation so as to be satisfactory to him, he may give a notice of appeal under sub-s. (4) and s. 33, *infra*, p. 266.

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Sect. 27. These rights of objection and appeal will be dealt with separately, *infra*, pp. 245, 248.

THE OWNER
OF THE LAND.

Person interested in the Land.—"Interest" in relation to land is defined in s. 41, *infra*, p. 302. Any person interested in the land, not being an owner as described in the preceding note, may apply to the Commissioners for a copy of the provisional valuation of the land in which he is interested, apparently at any time before the valuation is finally settled, and "then" has the same rights of objection and appeal as the owner, sub-s. (5); see the preceding and succeeding notes. "Then" appears to mean "on his application." A person interested, not being the owner, has no right to have a copy of the provisional valuation served upon him. Such persons should not therefore fail to apply for copies of the provisional valuation before it is finally settled, if they think they are likely to be affected by it. The time when the provisional valuation is "finally settled" appears to mean, if no notice of objection is given by an owner within the time limited by sub-s. (2), the time when the Commissioners, acting under sub-s. (1), adopt the values shown in the provisional valuation as the original total and original site values; if no notice of appeal is given within the time limited by the appeal rules (*supra*, p. 242), the time when the Commissioners do so, acting under sub-ss. (2) and (4); if such a notice of appeal is given, the time when the appeal is decided or given effect to under the appeal rules. In each case the term "finally settled" applies only to the valuation of the particular land in question.

It is submitted that the copy to be furnished to the person interested should be furnished to him free of charge, and that the general provision in s. 30 (2), for charging a fee for a copy of the "record" to be kept by the Commissioners, does not apply to a copy furnished under the present sub-section. See also s. 31 (4).

Powers of the Commissioners.—The position of the Commissioners with regard to the disposing of objections made under sub-s. (2) appears to be in many respects analogous to that of an assessment committee with regard to the disposing of objections made under s. 18 of the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), or under s. 1 of the amending Act of 1864 (27 & 28 Vict. c. 39). The Commissioners are, it is submitted, like the assessment committee, a body which has to decide upon objections to a valuation which it has itself made or for which it is responsible, and not "a court or a tribunal exercising judicial functions in the legal acceptance of the terms." See *R. v. St. Mary Abbots Assessment Committee*, [1891] 1 Q. B. 378, at p. 382. The determination of an objection by the Commissioners (as by the assessment committee) is made a condition precedent to an appeal by the objector, as to which see p. 245.

It is true that the present Act does not expressly give the Commissioners power to "hear" objections of which notice is given to them; but it is clearly implied by sub-ss. (2) and (4) of s. 27 that they must determine such objections, and it is submitted that the Commissioners are also by implication empowered in order to that determination to hear any objector who has duly given

notice of objection, and that they are bound to hear the objection, at any rate if the objector so desires. Section 19 of the Union Assessment Committee Act, 1862, expressly empowers the assessment committee to "hear" objections, though it does not expressly say that they must do so; but the case cited shows that the committee "have a duty imposed upon them to hear and determine" the objections of which notice is given to them (*per* POLLOCK, B., at p. 380). It is submitted that the present section imposes no less a duty upon the Commissioners in respect of objections of which due notice is given, although such a duty is perhaps not so clearly imposed upon them by the present Act as upon the assessment committee by the Act of 1862. If this is so, the Commissioners are bound at the hearing to hear any agent appointed by the objector for this purpose, whether that agent be counsel, solicitor, surveyor or other person, though they might refuse to hear a manifestly improper person. Cf. *R. v. St. Mary Abbotts Assessment Committee*, *supra*.

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POWERS OF
THE COM-
MISSIONERS.

Review.—By sub-s. (3), the Commissioners are given power (apart from objection) to review their own valuation of any land, at any time before the valuation is finally settled; they are not therefore bound by the copy served or furnished under sub-s. (1) or sub-s. (5), until final settlement. Cf. the somewhat similar powers given to assessment committees on the revision of valuation lists, by s. 20 of the Union Assessment Committee Act, 1862.

Acting under sub-s. (3), the Commissioners may apparently either raise or lower the values shown in the provisional valuation (so long as it has not been finally settled); cf. the examples on p. 249, *infra*. If they exercise their powers under sub-s. (3), apparently the rest of the provisions of the section, as to the copies being served and furnished, objection, appeal, etc., will apply as if the making of the amendment were the making of the provisional valuation in respect of that piece of land.

Objection as a Condition Precedent to Appeal.—If no notice of objection is given, the values shown in the provisional valuation shall be adopted as the original total and original site value respectively (sub-s. (1)). After this there can be no appeal by any one against these values. But further, it is provided by s. 33 (1), proviso (a), that an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation. It is necessary therefore for any owner or person interested, who wishes to preserve his right of appeal against the decision of the Commissioners, to give a notice of objection in accordance with s. 27. It is submitted that a person who has duly given notice of objection will on appeal be limited to the grounds specified in the notice of objection, so far as these grounds have arisen in fact at the time when the notice of objection has to be served. Cf. upon a similar point in rating law, *R. v. Lancashire JJ.* (1874), 43 L. J. M. C. 116; *Williams v. Bedminster Union* (1874), 30 L. T. 710; *R. v. London JJ.*, [1897] 1 Q. B. 433. At any rate it will be advisable to proceed upon the assumption that it is so, and to include in the

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OBJECTION
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TO APPEAL.

notice of objection all grounds upon which it may be desired to rely upon the appeal. See also the succeeding note.

The opening words of sub-s. (4) do not make it clear whether, when the objector has duly given notice of objection, he must wait for the decision of the Commissioners upon his objection before he can appeal to the referee. The rules to be made under sub-s. (5) of s. 33 may perhaps clear up this difficulty. Apart from this, it is submitted that the decisions upon s. 1 of the Union Assessment Committee Amendment Act, 1864, would be followed, and that the objector must secure from the Commissioners a decision upon his objection before he can give notice of appeal. Under that section, which provides that no person shall appeal "to any sessions against a poor rate made in conformity with a valuation list . . . unless he shall have given to [the assessment] committee notice of objection against the said list, and have failed to obtain such relief in the matter as he deems just," it has been held that where the committee delayed to hold a meeting for considering the objection, and where the committee held such a meeting, but adjourned the consideration *sine die*, appeals brought without waiting for the decision of the committee were premature (*R. v. Biggleswade Union* (1869), 21 L. T. 494; *R. v. Bedminster Union* (1876), 1 Q. B. D. 503). It may be that if the Commissioners delay or refuse to decide upon a notice of objection duly given, *mandamus* will be the proper remedy; but this cannot be laid down with certainty.

Notice of Objection.—Time of Service.—Where the owner (*vide, supra*, p. 243) is the person who serves a notice of objection it must be served (subject to the provision for extension of time in any special case) "within sixty days" of the date on which the copy of the provisional valuation is served upon him, within the meaning of s. 31 (4), *infra*, p. 257. As the person interested in the land, not being the owner (*vide, supra*, p. 244), is given the same right of objection as the owner, the sixty days in his case would appear to run from the time when a copy of the provisional valuation is delivered to him upon his applying for a copy under s. 27 (5), before the valuation is finally settled. The use of the phrase "within sixty days" in sub-s. (2) has the effect of excluding the day on which the copy is served or delivered as the case may be (*Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161). Thus if the copy is served (or delivered) on the 31st October, the notice of objection must be served on or before the 30th December. As regards both owners and persons interested, the Commissioners may allow an extension of time in any special case (sub-s. (2)). It would appear that the Commissioners may make an order allowing such an extension, even after the original "sixty days" have expired. See also the note on appeal, *infra*, p. 248.

Method of Service.—The Act does not state how the notice is to be served, but clearly it cannot be intended that each of the Commissioners should be served separately.

Grounds of Objection.—These have to be stated in the notice of objection, and a reason has already been given for suggesting that any grounds which it is proposed to raise on appeal should be

included in the notice of objection, so far as these grounds have arisen by the time the notice has to be served.

In a notice of objection to a valuation list made for poor rate purposes it is necessary to specify the grounds of the objection, Union Assessment Committee Act, 1862, s. 18; *R. v. Lancashire, J.J.*, and the other cases cited therewith, *supra*, p. 245. Under that section it has been held that a number of notices of objection which alleged, some of them, "unfairness" simply and some of them "unfairness" in proportion to other assessments, as the only ground of objection were sufficient notices, so that the assessment committee were bound to hear and determine the objections; and Lord Alverstone, C.J., said, "It is said, because the word 'unfairness' is used, and because in some of the notices it is said that the objector complains of unfairness because other persons are not rated in the same proportion as himself, that that necessitated notices being given to the people who were so hinted at. I am unable to take that view. . . . The notices which were here given mean 'My assessment is too high; that is my grievance. I do not ask for other assessments to be altered;' *R. v. West Ashford Union* (1907), Konstan's Rat. App. (1904-1908) 624, at p. 631. In regard to the notices now under discussion, therefore, it is submitted that a notice of objection will be sufficient which states clearly the ground of objection that the total value or the site value (whichever is objected to) is too high, or is excessive, or is unfair. There is no provision here, as there is in s. 18 of the Act of 1862, for an objection on the ground of some person other than the objector being under-assessed, and therefore a ground of objection based solely upon a comparison with other assessments may be sufficient in the present case, although it is not sufficient in an objection to a poor rate valuation list unless notice is given to the person who is alleged to be under-assessed. But it will be advisable to act upon the view that such a ground of objection will not be sufficient by itself; and therefore (if it is desired to take the ground of comparison with the assessment of other lands) besides including this ground of objection in the notice, also to allege that the values of the land of which the objector is owner or in which he is interested are too high.

Note that the owner or person interested may sometimes find it advisable to object on the ground that the values shown are too low, and not that they are too high; see the note on "Assessable site value," *supra*, p. 223.

The grounds should specify whether it is the total value or the site value that is objected to; and if both values are objected to, it should be made clear that the same ground of objection applies to both, or a separate ground should be given for each of them. If the value of the land for agricultural purposes has not been shown in any case in which, under s. 26 (1), it ought to have been shown, or if that value is incorrectly shown, this should form a separate ground of objection.

Unless the deductions allowed by the Commissioners in ascertaining the total value and site value under s. 25 (3), (4), are actually shown in the copy of the provisional valuation served on the owner or delivered to the person interested (*supra*, pp. 243, 244), it does not

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appear necessary in the notice of objection to take the ground that no deductions, or that insufficient deductions, have been allowed; these matters can be raised upon the ground that the site value is excessive. If the deductions are in fact there shown, and are alleged to be insufficient in amount, it will be best to specify their insufficiency as a ground of objection in the notice.

If the land in respect of which the total or site value is considered incorrect is not a piece of land under separate occupation, or is not the part of such land which the owner (in the meaning which that term bears in s. 26, *supra*, p. 229) has under s. 26 required to be separately valued, it is submitted that that may be taken as a ground of objection. If such a ground is taken, it should be specifically mentioned in the notice.

The notice of objection should of course make it quite clear to which entry in the provisional valuation objection is taken. This will best be done by exactly copying into the notice the relevant particulars from the copy of the provisional valuation which is served upon the owner, or delivered to the person interested, as the case may be.

See also the note on "Powers of the Commissioners," *supra*, p. 244.

Claim to Deductions.—If the deductions admissible in ascertaining site value under s. 25 (4) have not been claimed in an estimate furnished under s. 26 (3), and are not claimed in a notice of objection given under the present section, they cannot be claimed on any occasion on which increment value duty becomes payable (s. 12, *supra*, p. 121).

Appeal.—A person who has given a notice of objection (*supra*, pp. 246–8) to the provisional valuation, if that valuation is not amended by the Commissioners so as to be satisfactory to the objector, may appeal in the first instance to a referee. As regards this right of appeal, see s. 33, *infra*, p. 266. The time and manner of appealing are to be determined by rules to be made under sub-s. (5) of that section. If no notice of appeal is given the total and site value stated in the provisional valuation, subject to any amendments made on objection, are adopted as the original total value and the original site value respectively. Proviso (b) to s. 33 (1), *infra*, p. 267, makes it necessary to give notice of appeal under s. 27 (4) against the provisional valuation whenever it is desired to question the original total value or the original site value. If the time for appealing against these values under s. 27 (4) is allowed to go by, they cannot afterwards be questioned on an appeal against the assessment of duty. The rules to be made under s. 33 (5) will no doubt provide for the form in which the notice of appeal is to be given. It has been submitted that probably no ground can be taken upon appeal which has not already been taken as a ground of objection. See note on "Grounds of Objection," *supra*, p. 246.

Assessment of Duty pending Final Settlement of Values. (sub-s. (6)).—The relation of the original total value or original site value to the increment value duty and undeveloped land duty has

been shown in the note on original total value and original site value, *supra*, p. 243. If either of these duties becomes leviable before the original total or the original site value has been finally settled, the duty is to be assessed as if the values shown in the provisional valuation, or in the provisional valuation as amended by the Commissioners (whichever stage has been reached at the time when the duty is leviable), were the values adopted as the original total and site values. As to the meaning of "finally settled," *vide supra*, p. 242. Upon these values being finally settled, if it is found that the amount which should have been paid as duty exceeds that actually paid, the excess shall be deemed to be arrears of the duty, but no penalty is to be levied; if it is found that the amount which should have been paid is less than that actually paid, the Commissioners are to repay the difference. A further provision on this matter as to the undeveloped land duty is to be found in s. 19, *supra*, p. 165. It is submitted that the provision in s. 19 may be put in force as soon as either the original total value or the original site value (whichever is material) has been finally settled; while the provision of s. 27 (5) applies to the levy of duty *before* the settlement of value. The words "as arrears of the duty" appear to mean that the sum recoverable should be recovered in the same way as the duty is recoverable if assessed in the ordinary way; see s. 4 (4), pp. 89, 95, s. 5, pp. 99-101, and s. 6 (3), pp. 101-104, as to increment value duty, and s. 19, pp. 165-167, as to undeveloped land duty.

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Examples.—(a) The site value of a piece of land as shown in the provisional valuation is £960. Undeveloped land duty becomes leviable upon it before the value has been finally settled. It is payable at $\frac{1}{2}d.$ in the £ on £960; that is to say, the owner has to pay a duty of £2. Upon being finally settled, the original site value as adopted is £1200. The duty upon this sum would be £2 10s. The owner is liable for the additional 10s., which he has to pay as arrears of the duty.

(b) The same land is transferred on sale before the value has been finally settled. The site value on the occasion on which increment value duty becomes due, ascertained under s. 2 (2), *supra*, p. 76, is £1500. The increment value duty is therefore calculated as if the increment value were £1500, *less* £960 (the site value as shown in the provisional valuation), or £540; and the transferor has to pay an increment value duty of one pound in every five pounds of that value, or £108. On the original site value being adopted at £1200, it is found that the increment value should have been only £1500, *less* £1200, or £300. The increment value duty on this sum would have been only £60. The transferor is entitled to be repaid the difference, *i.e.* £48.

An appeal under the words "against the amount of any assessment of duty" in s. 33, *infra*, p. 266, appears to lie when duty has been assessed under the provisions of s. 27 (6). Provisos (a) and (b) appear to apply in such a case, so that the original total and original site value cannot be questioned in such an appeal. These amounts can only be questioned on an appeal brought under sub-s. (4); it may well happen in a particular case that an appeal under

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land.

sub-s. (4) cannot be brought until after the provisions of sub-s. (6) have already been applied. If an appeal under sub-s. (4) is successful, the appellant may be entitled to a repayment of difference under sub-s. (6).

28. For the purpose of obtaining a periodical valuation of undeveloped land the Commissioners shall, in the year nineteen hundred and fourteen and in every subsequent fifth year, cause a valuation to be made of undeveloped land showing the site value of the land as on the thirtieth day of April in that year, and for the purpose of ascertaining the value at that time the provisions of this Act as to the ascertainment of value shall apply for the purpose of ascertaining value on any such periodical valuation as they apply for the purpose of ascertaining the original value :

Provided that if on any such periodical valuation the valuation of any undeveloped land which is liable to undeveloped land duty is for any reason begun but not completed in the year of valuation, the Commissioners may complete the valuation after the expiration of the year of valuation, subject to an appeal under this Act.

Periodical Valuation of Undeveloped Land.—In the years 1914, 1919, and so on, the Commissioners are to make a fresh valuation of undeveloped land, showing the site value only. “Undeveloped land” is defined in s. 16 (2), *supra*, p. 139, and apparently the periodical valuation is confined to land which is “undeveloped land” on 30th April in the year in question. As to Crown lands, *vide supra*, p. 230. Although the section does not say that *all* “undeveloped land” is to be included in the periodical valuation, there appears to be nothing to prevent the inclusion of undeveloped land in respect of which an exemption arises under s. 17 or s. 18, *supra*, pp. 155, 164, or under any of the general provisions for exemption, with respect to rating authorities, s. 35, governing bodies or registered societies, s. 37, or statutory companies, s. 38, *infra*, pp. 277–293. It is submitted that the land, which is under sub-s. (2) (b) of s. 16, *supra*, p. 139, not to be treated as undeveloped land for the purposes of s. 16, should nevertheless be included in the periodical valuation to be made under this section.

The site value is to be ascertained upon the principles laid down in s. 25 (4), *supra*, p. 200; and as on the 30th April in that year, see note “at the time,” *supra*, p. 205. And the provisions of ss. 26 and 27, *supra*, pp. 229, 240, so far as those provisions relate to site value, apply to the making of this valuation without modification; but of course the site value as finally adopted in the periodical valuation will not be called the “original site value.” “The owner

of the land" within the meaning of s. 27 (1) and (7), and the "person interested in the land" within the meaning of s. 27 (5), see notes *supra*, pp. 243, 244, will have the same rights of objection and appeal in reference to the periodical valuation, as they have under s. 27 with respect to the original valuation, see notes *supra*, pp. 245, 246. Proviso (b) to s. 33 (1), *infra*, p. 267, is expressly applied to appeals against the site value as ascertained upon a periodical valuation; and it is submitted that proviso (a) applies also. The pieces of land to be separately valued will be determined upon the principle laid down in s. 26 (1), *supra*, p. 229. And returns such as are required under s. 26 (2) may be required for the purpose of the periodical valuation under s. 28 also.

Where the site value of land has been ascertained under a periodical valuation made under this section, the undeveloped land duty will be assessed upon the site value so ascertained, while that periodical valuation is "for the time being in force," s. 16 (3), *supra*, p. 140. Each periodical valuation will apparently come into force as regards any piece of land as soon as the site value for that land has been finally adopted in the manner specified in s. 27, *supra*, p. 240.

But both s. 19, *supra*, p. 165, and s. 27 (6), *supra*, p. 241, contain provisions for the assessment of undeveloped land duty where the value of the land has not been finally settled, so that the question on what precise date the periodical valuation comes into force will probably not be of much practical importance. Each periodical valuation will continue in force until the next one comes into force.

Note that there is no provision for any rectification of site value at the instance of the taxpayer, except during the making of a new periodical valuation every five years. Those persons who are entitled to object or appeal on such an occasion should therefore not let the time slip by for doing so.

The special provision regarding the original site value of land held by statutory companies, s. 38 (2), *infra*, p. 287, does not appear wide enough to prevent undeveloped land held within the meaning of that section from being valued in a periodical valuation in the same way as other undeveloped land.

As to the recording of particulars of the valuation made under s. 28, see s. 30 (1) and (2), *infra*, p. 255.

Completion of Periodical Valuation.—The proviso to s. 28 appears to suggest that no land can be valued in the periodical valuation unless the valuation of that land is, in some way, begun in the calendar year 1914, 1919, and so on. If, however, the valuation of any undeveloped land liable to the duty is so begun, the valuation of that land may be completed after the expiration of that year.

Note, however, that the proviso only applies to undeveloped land which is liable to undeveloped land duty, and does not therefore apply to any land which is within the benefit of the exemptions from this duty contained in s. 16 (2) (b), ss. 17, 18, 35, 37, or 38. See the last note.

It is submitted that the words "subject to an appeal under this Act" mean that the appeal shall be of the same kind, and shall be

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PERIODICAL
VALUATION
OF UNDE-
VELOPED
LAND.

Sect. 28.**COMPLETION
OF
PERIODICAL
VALUATION.**

Assessment
of duty on
separate
parcels of
land and
apportion-
ment of
valuation.

open to the same persons, as an appeal under ss. 27 and 33 against the provisional valuation made under s. 26. See the last note.

29.—(1) Any duty under this Part of this Act may be assessed on or in respect of any such pieces of land whether under separate occupation or not, as the Commissioners think fit.

(2) The Commissioners shall make such apportionments and reapportionments of any original site value or any site value fixed on a periodical valuation as they consider necessary for the purpose of the collection or assessment of increment value duty or undeveloped land duty, or which they may be required at any time to make on the application of any person entitled to the fee simple of any land or to an interest in any land.

On any such apportionment or reapportionment for the purpose of the collection of increment value duty on the occasion of the transfer on sale of the fee simple of the land or any interest in the land, or on the occasion of the grant of any lease of the land, the consideration for the transfer, or for the grant of the lease, shall be treated as one of the matters to which regard must be had in making the apportionment or reapportionment.

(3) The provisions relating to the procedure on the valuation of land for the purposes of this Part of this Act shall apply with respect to the apportionment or reapportionment of site value under this section as they apply with reference to the ascertainment of the original site value of land.

(4) The value attributed on any such apportionment or reapportionment to each part of the land shall for the purposes of this Part of this Act be treated as the original site value or the site value of the land, as the case may be.

Pieces of Land to be Assessed to Duty.—The power given to the Commissioners by sub-s. (1) relates only to the assessment of duty. The total value and site value in the valuations directed under ss. 26 and 28 have to be ascertained in respect of the pieces and parts of pieces of land described in s. 26, *supra*, p. 229; but the

Commissioners have under the present section power for the purpose of assessing the increment value duty and undeveloped land duty to disregard the division so made, and to apportion the values so ascertained. As to the apportionment of original site values for the purposes of increment value duty, see also s. 3 (1), *supra*, p. 83. The Commissioners may apparently, under this section, determine the site value on the occasion on which increment value duty is to be collected under s. 2 (2), *supra*, p. 76, in respect of such pieces of land as they think fit. The exercise of the powers granted by the present section may have an important effect on the exemptions from undeveloped land duty, as has been pointed out (*supra*, p. 158). But of course the Commissioners are bound to exercise their powers so as not to deprive the owner of any provision inserted in the Act for his benefit, if he is legitimately entitled to that benefit.

It is difficult to see in what way the powers given to the Commissioners by sub-s. (1) can be of practical use in connection with reversion duty which is assessed under s. 13, *supra*, p. 122. But s. 29 (1) is wide enough to permit them to be used for that purpose if necessary.

Minerals.—Minerals which are comprised in a mining lease or are being worked, are to be treated as a separate parcel of land for the purpose of assessment of duty as well as for valuation (s. 23 (2), *supra*, p. 188), unless they are exempted altogether from assessment of duty by virtue of s. 22 (2), *supra*, p. 180. In the case of such minerals, the provisions of s. 23 (2) will govern the Commissioners in the exercise of their powers under the present section. See as to mineral rights duty, *supra*, p. 175, and as to increment value duty levied as an annual duty, *supra*, p. 182.

Appeal.—A decision of the Commissioners under the powers given to them by sub-s. (1) may be questioned by any person aggrieved upon an appeal “against the amount of any assessment of duty” under s. 33 (1), *infra*, p. 266. Proviso (b) to s. 33 (1) does not appear to affect appeals so far as matters determined under s. 29 (1) are concerned.

Apportionment, etc., of Site Values.—“Original site value,” see s. 27, *supra*, p. 240; “site value fixed on a periodical valuation,” see s. 28, *supra*, p. 250; “fee simple,” “interest,” are defined in s. 41, *infra*, pp. 302, 303. The Commissioners may make the apportionment and reapportionment mentioned in s. 29 (2) of their own motion (if they consider it necessary for the purposes named) in which case they will divide the sum to be apportioned as seems best to them. But an application for apportionment or reapportionment may also be made to them at any time by the persons described, and if such an application is made to them, the Commissioners are bound to comply with it. It is submitted further that they are bound to divide the sum to be apportioned into such parts, and to allocate those parts to such pieces of land, as the applicant may require.

The occasions referred to in the second paragraph of sub-s. (2) are those upon which increment value duty is collected under s. 1 (a),

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supra, p. 59, and with respect to which increment value is ascertained under s. 2 (1), *supra*, p. 76, read with s. 2 (2) (a) and (b), where the consideration for the transfer or for the grant of the lease is used as indicating the site value of the land on those occasions.

It is not very clear in what way regard is to be had to these matters in making the apportionment or reapportionment. But what is apparently meant is that where the original site value has been ascertained under s. 26 and s. 27, *supra*, p. 240 (or the site value under a periodical valuation under s. 28) for a piece of land, and a part of that land is afterwards the subject of (say) a transfer on sale, the consideration paid upon the transfer may afford some guide as to what portion of the original site value or site value should be allocated to the transferred part of the land. As to "consideration," see s. 32, *infra*, p. 258.

Upon an apportionment or reapportionment of original site value under the present section, the value allocated to each part of the land will (by virtue of sub-s. (4)) be treated for purposes of increment value duty as the original site value which forms one of the factors in determining increment value (see s. 2, note on "increment value" and example (c) thereto, *supra*, p. 78), and will be treated as the site value of undeveloped land for the purposes of undeveloped land duty under s. 16 (3), *supra*, p. 140. A similar consequence will follow as to undeveloped land duty where it is the site value fixed on a periodical valuation which is apportioned or reapportioned.

The enjoyment of exemptions from undeveloped land duty created by s. 17, *supra*, p. 155, may often depend upon a proper apportionment, etc., being made under the present section.

Examples.—(a) The original site value of a piece of land, thirty acres in extent, is £2000. Ten acres of the land are in 1911 transferred on sale for £1500. The Commissioners, having regard to the consideration paid for these ten acres, apportion the original site value as follows: £1200 to the ten acres sold, and £800 to the remaining twenty acres. Suppose the deductions allowable under s. 2 (2) to be £100; the site value of the ten acres on the occasion of the transfer on sale is £1500 less £100, or £1400. The original site value of the ten acres as apportioned is £1200; the increment value on which duty is payable is £1400 less £1200, or £200.

(b) After the above apportionment has been made (and supposing no reapportionment has been made) the undeveloped land duty will be assessed in respect of the ten acres sold, upon £1200. The original site value of the remaining twenty acres after the apportionment is £800, or £40 per acre. Consequently, by virtue of s. 17 (1), no undeveloped land duty will be charged in respect of these twenty acres.

Apportionment of Original Capital Value of Minerals.—

It is submitted that the provisions of s. 29 (2), (3), (4), apply to the original capital value of minerals, by virtue of s. 23 (4), *supra*, p. 189; whether that original capital value has been ascertained under s. 23 (2), or under s. 22 (7), *supra*, p. 181. It may perhaps become necessary or desirable for this original capital value to be

apportioned for the purpose of calculating increment value under s. 22 (3), *supra*, p. 180.

Example.—The minerals under ten acres of land are valued in one parcel under s. 23 (2), although they are not at the time of the valuation comprised in a mining lease or being worked. Their original capital value is £10,000. Afterwards the minerals under four of these ten acres become comprised in a mining lease. The original capital value is apportioned under s. 29 (2); the value allocated to the minerals under the four acres comprised in the mining lease is £5000. This sum is treated as the original capital value of those minerals. The annual equivalent thereof is $\frac{2}{5}$, or £400. If the rental value for the year is £600, the increment value on which the annual duty is leviable under s. 22 (3) is £600 less £400, or £200.

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ORIGINAL
CAPITAL
VALUE OF
MINERALS.

Machinery of Apportionment—Objection—Appeal.—It is not laid down in what manner such an application as is described in sub-s. (2) must be made; but it may be made at any time. The provisions referred to in sub-s. (3) appear to be those of ss. 26, 27, 31, 32 and 33. Among these the following matters may be specially noted. It appears that the returns mentioned in s. 26 (2) may be required for the purposes of s. 29 (2). The rights of objection and appeal created by s. 27, *supra*, p. 241, apply to an apportionment, etc., made under s. 29 (2), and are apparently given to the persons specified in s. 27 (7), as well as to "owners," as defined in s. 41, *infra*, p. 303, and to "persons interested in the land." It would appear that both provisos (a) and (b) to s. 33 (1) apply to an appeal against such an apportionment, so that no one can appeal against such an apportionment, etc., unless he has already made an objection thereto; and so that such an apportionment can only be questioned upon an appeal brought against it, and not upon an appeal against an assessment of duty. Copies of the apportionments, etc., made under s. 29 (2) must apparently be served and furnished as is done with copies of the provisional valuation under s. 27 (1) and (5).

The Commissioners are under s. 30 to record particulars of all apportionments and reapportionments made by them under s. 29 (2).

30.—(1) The Commissioners shall record particulars of all valuations, apportionments, reapportionments, and assessments made by them under this Part of this Act, and of any deductions allowed in determining any value, and of the amount of any duty paid under this Part of this Act in respect of any land.

Duties of
Commis-
sioners as to
keeping
records and
giving
information.

(2) The Commissioners shall furnish to any person interested in any land, or to any person authorised by any person so interested, on his application and on payment of such fee, not exceeding two shillings and sixpence, as the Commissioners may fix with the

Sect. 30. approval of the Treasury, copies of any particulars so recorded by them relating to the land, certified, if required, by a Secretary or Assistant Secretary to the Commissioners.

The matters, of which under this section a record is to be kept, embrace practically all the matters connected with value or with amounts of assessment which the Commissioners have power to determine under Part I. (see *e.g.* ss. 2 (2), 3, 13, 16, 20, 22, 23, 25-29).

As the words "by them" are not repeated after "deductions allowed," it would appear that the Commissioners should record deductions allowed on appeal from their decisions, as well as deductions allowed by themselves. As to appeals, see s. 33, *infra*, p. 266.

Copies to be Furnished.—A person interested in the land is apparently an "owner" or one who has any "interest in relation to the land" as defined by s. 41, *infra*, p. 302. Such persons may have copies as of right, on making the payment mentioned. There is nothing, however, in this section to prevent the Commissioners from furnishing copies to persons other than those interested in the land, for instance, to intending purchasers, whether these are public bodies, statutory companies, or other persons, but the propriety of such a practice may be questioned.

It is doubtful whether sub-s. (2) applies to the copy of the provisional valuation which is to be furnished, on his application, to any person interested in the land, under s. 27 (5), *supra*, p. 241, so as to enable the Commissioners to make any charge for such a copy.

Information
as to names
of owners
of land.

31.—(1) Every person who pays rent in respect of any land, and every person who as agent for another person receives any rent in respect of any land, shall, on being required by the Commissioners, furnish to them within thirty days the name and address of the person to whom he pays rent or on behalf of whom he receives rent, as the case may be.

5 & 6 Vict.
c. 35.

(2) For the purpose of the exercise of their powers or the performance of their duties under this Part of this Act in reference to the valuation of land, the Commissioners may give any general or special authority to any person to inspect any land and report to them the value thereof, and the person having the custody or possession of that land shall permit the person so authorised, on production of the authority of the Com-

missioners in that behalf, to inspect it at such reasonable times as the Commissioners consider necessary. Sect. 31.

(3) If any person wilfully fails to comply with the provisions of this section he shall be liable to a penalty not exceeding fifty pounds to be recoverable in the High Court.

(4) Any notice requiring a return for the purpose of valuation, any copy of a provisional valuation, and any other notice or document which is required to be given or sent to an owner or a person interested in land under this Part of this Act by the Commissioners shall be sufficiently given or sent if sent by post to the address of the owner or person interested furnished to the Commissioners under the powers given by this section, or, if the address cannot be so ascertained, by leaving the notice or a copy of the document addressed to the owner or person interested with some occupier of the land, or, if there is no occupier, by causing it to be put up in some conspicuous place on the land.

Information as to Names and Addresses.—"Rent" and "land" are defined in s. 41, *infra*, p. 301. No duty is put by sub-s. (1) on a person receiving rent as trustee or mortgagee unless he can also be said to do so as agent. "Within thirty days," *i.e.* of the date of the requisition, which date will be excluded in the calculation (*Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161); thus, if the requisition is served, say on 31st March, the information required must be furnished on or before 30th April.

Inspection.—Any person may be authorised by the Commissioners under sub-s. (2) to inspect land. The authority referred to must apparently be in writing, for the person authorised has to produce his authority to the person having custody or possession of the land before he can claim to inspect it, and before the penalty for refusal can be recovered. It does not appear that the concluding words make the Commissioners the final judges of what times are reasonable, and it is submitted that it is open to the High Court upon proceedings for a penalty to hold that the times which the Commissioners considered necessary in a particular case were not reasonable.

It would appear that the provisions of sub-s. (2) may be put in force for ascertaining the rental value of minerals under s. 20 (2), *supra*, p. 167.

Penalty.—See note to s. 26 (2), *supra*, p. 240. The word "wilfully" appears in the present provision, but not in s. 26 (2).

Sect. 31. If the difference is intentional, the offence would appear to be somewhat narrower than that created by s. 26 (2). See also the
 —————
PENALTY. penalty provided in s. 94, *infra*, p. 322.

Service of Notices, etc.—Returns for the purposes of the valuation of land may be required by notice under s. 26 (2), *supra*, p. 229, and of minerals by notice under s. 20 (3), *supra*, p. 168. Copies of provisional valuations are to be served on owners of land under s. 27 (1), and (apparently) to be given to persons interested under s. 27 (5), *supra*, p. 241. Other documents to be given or sent to such owners or persons are notices of apportionment, etc., under s. 29 (3), read with s. 27 (1) and (5), and copies of valuation of the rent of minerals being worked by the proprietor thereof under s. 20 (2) (b), *supra*, p. 168.

Determina-
 tion of value
 of considera-
 tion.

32.—(1) Where the value of any consideration for a transfer or lease is to be determined for the purposes of this Part of this Act, that value shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and, so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioners to be the capital value of that payment.

(2) If the Commissioners are satisfied that any covenant or undertaking or liability to discharge any incumbrance, or, in cases where a nominal rent only has been reserved, any covenant or undertaking to erect buildings, or to expend any sums upon the property, has formed part of the consideration, the Commissioners shall allow such sum as they think just in respect thereof as an addition to the value of the consideration.

(3) Where it is necessary to apportion any consideration for the purposes of this Part of this Act as between properties included in any transfer or lease, the consideration shall be apportioned by the Commissioners in such manner as they determine.

Determination of Value of Consideration.—The value of the consideration for a transfer or lease has to be determined in the cases described in s. 2 (2) (a) and (b), *supra*, pp. 76, 77, for the purpose of ascertaining the site value of the land on the occasion on which increment value duty is to be collected under

that section. It may also have to be determined for the purpose of sub-s. (3) of s. 2, *supra*, p. 77. For the purposes of s. 2, it is to the interest of the taxpayer that the value of the consideration should be fixed as high as possible.

Reversion duty is assessed under s. 13, *supra*, p. 122, upon a sum which represents the excess of the total value of the land at the time the lease determines (subject to certain deductions) over the total value of the land at the time of the original grant of the lease. The latter amount is to be ascertained on the basis of the rent reserved and payments made in consideration for the lease, with a provision somewhat similar to that contained in sub-s. (2) of the present section. See the note on "Value of the benefit," *supra*, p. 124.

The determination is in each case to be done by the Commissioners; as to increment value duty, *vide supra*, p. 78, and as to reversion duty, *supra*, p. 136.

It does not appear that the present section will have much effect in practice on the ascertaining under s. 20 (2) of the rental value of minerals; but "rent" is defined in s. 24, for the purposes of the provisions as to minerals, to include various kinds of "consideration."

Consideration for a Transfer or Lease.—"A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other" (*per* LUSH, J., in *Currie v. Misa* (1875), L. R. 10 Ex. p. 162, based on Com. Dig. Action on the Case, Assumpsit, B. 1-15). This definition has been constantly accepted as correct (*Fleming v. Bank of New Zealand*, [1900] A. C. p. 586). Section 32 (2) of the present Act specifies certain cases in which a "right," "interest," "forbearance," or "responsibility" may form part of the consideration, though by no means all possible cases are there specified; and it may be that only in the cases actually specified in sub-s. (2) can such matters be included in "consideration for the purposes of the present section; see note on "Covenants, undertakings, etc.," *infra*, p. 265.

The question whether a transaction is a "transfer on sale" within the meaning of the present Act when the consideration for the transfer is not money, but money's worth, has been discussed *supra*, p. 62. For the purposes of the present note, it is assumed that the view there submitted is correct, namely that a consideration within the meaning of this Act may (within the limits imposed by s. 32 (2)) be either in money or money's worth, and that transfers of land or interests in land which have been held under the Stamp Acts to be conveyances or transfers on sale, are "transfers on sale" for the purposes of the present Act. Subject to this assumption, the cases decided on the meaning of "consideration" in the Stamp Acts, and summarized in the ensuing notes, appear to afford some guide to the meaning of the word in this Act also. The Stamp Act, 1891, following the example of earlier Stamp Acts, imposes a stamp duty on "conveyance or transfer on sale" upon a scale graduated according to "the amount or

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TION OF
VALUE OF
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value of the consideration " (First Sched.). In s. 55, the Act of 1891 deals with cases where stock or securities (marketable or unmarketable) are, or form part of, the consideration for a conveyance on sale, in terms which suggest that such matters may be, or form part of, a consideration in the general sense of the law. Section 57, however, enacts that where "property is conveyed to any person, wholly or in part, in consideration of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part" of the consideration. At first sight this section may appear to indicate that such matters would not but for this provision be "consideration" in law; but if the history of the legislation on this subject be considered (as stated in *Inland Revenue v. Liquidators of City of Glasgow Bank* (1881), 8 R., at pp. 391, 392, up to the passing of s. 73 of the Stamp Act, 1870), it will be found that this provision was, at any rate in part, enacted rather with the object of including matters which the more limited language of earlier Acts had been held to implicitly exclude, than of making matters "consideration" under the Stamp Acts which are not "consideration" in the ordinary legal sense. It is submitted, therefore, that the matters which have been held in the cases cited under "Liability for debt, mortgage, etc.," *infra*, p. 263, to fall within s. 57 of the Act of 1891, or within similar provisions in earlier Acts are generally "consideration" within the terms of the definition in *Currie v. Misa*, *supra*, p. 259, and within the meaning of the Finance (1909-10) Act, 1910, subject to certain limitations indicated in that portion of the note. This view appears to be borne out by the provisions of s. 32 (2); *vide infra*, p. 265.

Shares and Securities.—Where, upon a transfer on sale of property, the purchaser is a company, and a part of the consideration is paid in shares of the purchasing company, the amount of that part of the consideration is the average price at which the shares are being sold in the market at the date of the transfer of the property, under the Stamp Act, 1850, Schedule (*Furness Rail. Co. v. Inland Revenue* (1864), 33 L. J. Ex. 173, *supra*, p. 64); under the Stamp Act, 1891, s. 55 (*Great Western Rail. Co. v. Inland Revenue*, [1894] 1 Q. B. 507, *supra*, p. 64; *Coats v. Inland Revenue*, [1897] 1 Q. B. 778; 2 Q. B. 423, *supra*, p. 64). These decisions would appear to apply to the computation of "consideration" under the present Act, although they were decided under enactments (*supra*, p. 63) which make special provision for a consideration which takes this form. A difficult question may arise when the purchasing company pays for what it acquires, in securities which are not actually quoted in the market, as sometimes happens where a firm is newly formed into a company. Thus, in *Foster v. Inland Revenue*, [1894] 1 Q. B. 516, *supra*, p. 63, the duty was assessed upon the value of the property transferred, the Commissioners apparently having some difficulty in ascertaining the value of the shares received by the vendors, as they ought in strictness to have done under s. 71 of the Stamp Act, 1870; cf. *Chesterfield Brewery Co. v. Inland Revenue*, [1899] 2 Q. B. 7, *supra*, p. 64. As to cases where

interest on shares forms part of the consideration, see notes on Sect. 32.
 "Periodical money payment," *infra*, p. 264.

Under Lands Clauses Acts, etc.—It has been submitted, *supra*, p. 65, that, where land is actually taken under the Lands Clauses Acts, the transaction constitutes a "transfer on sale" under the present Act. Where, under those Acts, in assessing compensation for land taken, a sum is included on account of loss of business or goodwill (even though that sum is assessed separately from the value of the land and buildings), such sum, because it is really awarded as part of the price to be paid for the land taken, forms part of the "consideration" under the Stamp Act, 1870 (*Inland Revenue v. Glasgow and South Western Rail. Co.* (1887), 12 A. C. 315, *supra*, p. 65); for the same reason, such a sum when awarded in respect of mortgaged premises, goes to the mortgagee and not to the mortgagor who carried on the business which suffered the loss (*Pile v. Pile* (1876), 3 Ch. D. 36). In the former case the compensation was assessed by a jury under the Lands Clauses (Scotland) Act, 1845, s. 48, to which s. 49 of the English Lands Clauses Act, 1845, corresponds for this purpose; in the latter case by arbitrators under s. 63 of the English Act; see also *King v. Midland Rail. Co.* (1868), 17 W. R. 113. On the question whether such sums should be allowed under s. 25 (4) (d) of the present Act for "goodwill," *vide supra*, p. 227.

It seems doubtful whether, if compensation is awarded for the damage sustained by reason of severance of the lands taken from other lands of the same owner, or by reason of such other lands being injuriously affected (Lands Clauses Act, 1845, ss. 49, 63; cf. *Cowper Essex v. Acton Local Board* (1889), 14 A. C. 153), such compensation can be said to form any part of the consideration for the land transferred on sale. The consideration would appear, however, on the principle of *Inland Revenue v. Glasgow and South Western Rail. Co.*, and *Pile v. Pile*, *supra*, to include all sums awarded for the potential value or special adaptability of the land taken, as in *In Re Lucas and Chesterfield Gas and Water Board*, [1908] 1 K. B. 571; [1909] 1 K. B. 16, and the cases there cited, *vide supra*, p. 210; sums awarded for loss of fixtures; see *Pile v. Pile*, *supra*, sed cf. *Horsfall v. Key* (1848), 17 L. J. Ex. 266; and any sums that may be awarded as interest on the price of land taken (cf. *Fletcher v. Birkenhead Corporation*, [1906] 1 K. B. 605, 612, where the interest was, however, upon a sum assessed as compensation for damage). It would also appear, on the whole, to include the allowance of ten per cent. in addition to the price of the land which is often, as a matter of practice, allowed as compensation for compulsory purchase, and any sum awarded to cover expenses of reinstatement, but these points are more doubtful. The above remarks are intended to apply also where land is taken under s. 6 of the Railways Clauses Act, 1845, or s. 6 of the Waterworks Clauses Act, 1847.

Chattels, Goodwill, etc., purchased or leased as well as Land.—The consideration is, of course, confined to what is given for the land or interest in land actually sold or leased. But it frequently happens that where a business or an undertaking is purchased, the purchase includes not only the lands, but also the goodwill,

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the chattels, the book-debts, and other matters belonging to the business or undertaking; see *e.g.* *Foster v. Inland Revenue*, *supra*, p. 63; *Great Western Rail. Co. v. Inland Revenue*, *supra*, p. 64; *Att.-Gen. v. Felirstowe Gas Light Co.*, *supra*, p. 64; *West London Syndicate v. Inland Revenue*, *supra*, p. 65; and *Mayor, etc., of Eastbourne v. Att.-Gen.*, [1904] A. C. 155. The question how far the value of the goodwill is part of the value of the land is discussed *supra*, p. 227. If any part of the goodwill is separable from the premises, the value of that part must be deducted from the price paid; in any case the value of chattels, book debts, and other personal property must be deducted before the consideration actually given for the sale of the land or interest in land can be ascertained, but see the note on goodwill, *supra*, p. 227. As to book-debts, see also *Measures v. Inland Revenue* (1900), 82 L. T. 689; as to fixtures, *vide* p. 216.

Leases of licensed property are frequently granted upon the payment of premiums, and these are often in part paid for personal goodwill (*vide supra*, p. 227) and for chattels; cf. *Doe v. Hobson* (1823), 3 D. & R. 186. It has been a frequent practice in valuing such property for poor-rate purposes to take into consideration half the premium paid on such an occasion as being paid for the hereditament and all that is demised with it (including so much of the goodwill as can be said to be attached thereto), and to treat the rest as having been paid for personal property; examples of such valuations will be found in *Rice v. St. Mary, Lambeth* (1896), Ryde & Konstam's Rat. App. (1894-1904) 11; *Underwood v. St. John, Hampstead* (1901), *ibid.* 46. It is also common in leases or agreements for tenancies of licensed property to agree to pay, besides what is expressed to be a rent, an additional yearly sum in lieu of premium for the goodwill of the business carried on on the demised premises, and for the use of the fixtures and fittings. An additional payment of this kind has been held, under 8 Anne, c. 14, s. 1, not to be a rent for which the landlord could distrain (*Cox v. Harper*, [1910] W. N. 34; 26 T. L. R. 264).

Where land is sold or leased upon the condition that an annual payment should be made by the purchaser or lessee to some person other than the vendor or lessor for an easement (as sometimes happens where a wayleave is necessary to the enjoyment of land), such a payment would probably, in most cases, not form part of the consideration for the transfer or lease.

Rent Reserved.—Where a lease is granted, and a rent is reserved, the rent is, of course, a part of the consideration for the grant of the lease, whether a premium is also paid on the occasion of the grant or not, and s. 32 (1) provides for this case; *vide infra*, "Periodical money payment." But where there is an assignment of a lease already granted, and the assignee covenants to pay the rent reserved in the lease, the rent reserved is part and parcel of the thing demised, and forms no part of the consideration paid for the "transfer on sale" of the leasehold interest. If the assignment affects only a part of the premises demised by the original lease, and the assignee covenants to pay only an apportioned part of the rent originally reserved, the apportioned rent forms no part of the consideration. Such a rent is outside the terms of s. 57 of the

Stamp Act, 1891, *supra*, p. 260 (*Swayne v. Inland Revenue*, [1899] 1 Q. B. 335; [1900] 1 Q. B. 172); *a fortiori* it forms no part of the consideration under the present Act, which contains no corresponding provision. It seems questionable whether, if the assignment of the lease were made on terms imposing a higher rent than that reserved in the original lease, the profit-rental would form part of the consideration. [1899] 1 Q. B. pp. 342, 343. But where the contract of sale puts upon the purchaser some monetary obligation which did not exist before the sale, that new obligation may form part of the consideration; thus, where land in fee simple was sold, and the vendors covenanted to pay the tithe in return for a perpetual payment of 1s. per annum charged on the land, the 1s. was held to form part of the consideration for the sale, and *Swayne's Case* was distinguished (*Martin v. Inland Revenue*, (1904) 91 L. T. 453).

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It not infrequently happens that a lease shows, on the face of it, only the rent reserved, and that, although a premium has actually been paid for the grant, this is not expressed in the lease; cf. *Doe v. Lewis* (1830), 10 B. & C. 673; *Att.-Gen. v. Brown* (1849), 18 L. J. Ex. 336. In such a case both the premium and the rent reserved will form part of the consideration for the lease under the Finance (1909-10) Act, 1910. See also *Cox v. Harper*, *supra*, p. 262.

Liability for Debt, Mortgage, etc.—Sub-s. (2) of s. 32 treats a covenant or undertaking or liability to discharge an incumbrance as possibly forming part of consideration; in view of this fact, and in accordance with the observations made, *supra*, p. 259, it is submitted that the following matters which have been held to be, or to form part of, “consideration” under s. 57 of the Stamp Act, 1891, and under similar provisions of earlier Acts, are “consideration” within the Finance (1909-10) Act, 1910: debenture debts and other debts of the selling companies which were undertaken by the purchasing companies in *Furness Rail. Co. v. Inland Revenue* (1864), 33 L. J. Ex. 173, and *Great Western Rail. Co. v. Inland Revenue*, [1894] 1 Q. B. 507, *supra*, p. 64; arrears of interest due to a railway company by certain harbour commissioners, being a bad debt, which the railway company agreed to remit on taking over the harbour undertaking, in *Inland Revenue v. North British Rail. Co.* (1901), 4 F. 27, *supra*, p. 65; debts in satisfaction of which land is transferred under foreclosure or similar proceedings (*Inland Revenue v. Tod*, [1898] A. C. 399; *Huntington v. Inland Revenue*, [1896] 1 Q. B. 422; *In re Lovell and Collard*, [1907] 1 Ch. 249, *supra*, p. 66); upon a purchase forming part of a family arrangement, a debt due to the purchaser and released by him, and a mortgage debt undertaken by him by covenant with the mortgagees, in *Bristol (Marquess) v. Inland Revenue*, [1901] 2 K. B. 336, *supra*, p. 67; a rentcharge of £600, redeemable for £12,000 at the option of the vendors, for which (among other considerations) a dock company agreed to purchase a pier, tolls, etc. (but note that the whole of this sum was not paid for the purchase of an interest in land), in *Plymouth Great Western Dock Co. v. Inland Revenue* (1853), 22 L. J. Ex. 188. On the other hand, a man may “acquire the equity of redemption of an estate, or an estate subject to a charge, and allow the mortgage or charge to continue, taking the benefit

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of the surplus rents and profits" (*Chandos (Marquis) v. Inland Revenue* (1851), 20 L. J. Ex. p. 275); and where this is the case, it is not clear whether the liability to discharge such an incumbrance can be truly said to form part of the consideration within the meaning of s. 32 (2). The Stamp Acts have been amended since the case last cited, so as to include in "consideration" for the purposes of these Acts the amount of a mortgage or charge not undertaken by the purchaser (see Act of 1891, s. 57); see also *Inland Revenue v. City of Glasgow Bank*, *supra*, p. 260, and *Scottish Equitable Society v. Inland Revenue* (1894), 32 Sc. L. R. 77.

If a part of the purchase money is allowed to lie on mortgage, even though it is secured by a mortgage of the property purchased, as is often the case, such a sum nevertheless remains part of the consideration for the sale of the property (*Christie v. Inland Revenue* (1896), L. R. 2 Ex. 46, *supra*, p. 67).

It would appear that a capital sum, though payable only as a contingency, may nevertheless form part of the consideration for a transfer on sale within this Act; cf. *Mortimore v. Inland Revenue*, (1864) 33 L. Ex. 263.

On Surrender of Lease.—It not infrequently happens that the unexpired portion of a leasehold interest is surrendered, and a new lease is granted for a term of years which extends beyond that of the original lease, but at a rent (or for a premium) somewhat lower than could have been obtained by the lessor if there were no leasehold interest existing at the time of the surrender. In such a case it is submitted that there may be an element in the consideration, equal to the benefit which the lessee has foregone in surrendering the old lease, over and above the actual rent reserved or premium paid upon the grant of the new lease. But the point is not free from difficulty; and the additional element may often be so small as to be negligible. Cf. note on s. 14, *supra*, p. 133.

Periodical Money Payment.—The most usual case of a consideration consisting in whole or in part of a periodical money payment is that of a rent reserved either with or without a premium being paid, *vide* "Rent reserved," *supra*, p. 262. The payment in respect of title in *Martin v. Inland Revenue*, *supra*, p. 263, is another instance; and a payment for an easement or a wayleave may in some circumstances be such a periodical money payment, *supra*, p. 68; so also would be the rentcharge of £600 a year in *Plymouth Great Western Dock Co. v. Inland Revenue*, *supra*, p. 263, and the ground rents or feu duties reserved upon the sales in *Belch v. Inland Revenue*; *Gibb v. Inland Revenue*, *supra*, p. 68. It may be noted that though certain incorporeal hereditaments are excluded from the definition of land in s. 41, *infra*, p. 301, and therefore sales or leases of such incorporeal hereditaments as tithes and rentcharges are not within the Act, yet payments in respect of tithes or rentcharges may form part of the consideration for the land sold or leased, as in the cases above cited.

A payment depending on a contingency may, nevertheless, be a periodical money payment, as where a company purchasing the undertaking of another company agreed to pay to the selling company (as part of the consideration) every year a sum equal to 3

per cent. on the issued ordinary capital of the purchasing company, out of any profits that might be left in that year after the purchasing company had paid a cumulative dividend of 5 per cent. to its own shareholders (*Underground Electric Railways v. Inland Revenue*, [1905] 1 K. B. 174; [1906] A. C. 21).

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Where the consideration consists in part of a capital sum, and in part of a periodical money payment, the capital value of the latter as determined by the Commissioners must, of course, be added to the capital sum paid, in order to arrive at the true consideration. Sub-s. (1) leaves to the discretion of the Commissioners the basis on which they will capitalize the periodical money payment. In deciding what rate of interest to apply for this purpose, the Commissioners will no doubt take into account the character of the property transferred or leased, the conditions of the transfer or lease, and any other relevant circumstances.

In many cases, especially where leases are granted to sitting tenants upon the surrender or expiration of earlier leases, leases are granted in consideration of high premiums and low rents, with the effect that the tenant, being unable to recover from the landlord income tax under Schedule A (*vide supra*, p. 113) upon more than the actual rent reserved, is obliged to bear a considerable part of that income tax himself. Circumstances of this kind would, it is submitted, be properly taken into consideration by the Commissioners in determining the capital value of the periodical money payments reserved in the lease.

As to yearly sums agreed to be paid in lieu of premium, see *Cox v. Harper, supra*, p. 262.

Covenants, Undertakings, etc.—Where covenants and undertakings of certain classes have formed part of the consideration, in certain circumstances, a sum in respect of them shall be allowed as an addition to the value of the consideration; the sum is to be fixed by the Commissioners as they think just. These classes are:—

(i) Any covenant or undertaking or liability to discharge any incumbrance, if the Commissioners are satisfied that such has formed part of the consideration. See note on “Liability for debt, mortgage,” etc., *supra*, p. 263. “Incumbrance” is defined in s. 41, *infra*, p. 302.

(ii) In cases where a nominal rent only has been reserved, any covenant or undertaking to erect buildings, or to expend any sums upon the property, if the Commissioners are satisfied as above. The effect of this provision is, that where the rent reserved is something more than nominal, no addition will be made in respect of a covenant or undertaking of the kinds specified. This is, of course, a common case, as where land is let at a substantial ground rent, on condition of a specified sum being spent on buildings, or where a fresh lease is granted to a sitting tenant, on condition of his spending a definite sum on the existing buildings. Its exclusion is not accidental (Commons Debates, Official Report, 1909, Vol. 9, cols. 1344-1350). The question what is “a nominal rent only” is one which will have to be decided by the Commissioners in each case.

The effect of sub-s. (2) appears to be that no addition to the value of

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the consideration under this Act is to be made in respect of a burdensome covenant or undertaking not being of either kind specified, although such covenants and undertakings do frequently, in fact, add to the value of the consideration; cf. the covenant by the tenant of a sewage farm to deal with the sewage so that it should become inodorous, discussed in *Davies v. Seisdon Union*, [1907] 1 K. B. 630, 645; [1908] A. C. 315.

Covenants which except a portion of the property from the transfer or lease, such as covenants reserving rights of way, air, or light, covenants not to build or not to carry on trades, are, of course, in a different category, and do not, in fact, form part of the consideration for the property transferred or leased.

With sub-s. (2) compare the words in the second parenthesis in s. 13 (2), *supra*, p. 122.

Apportionment of Consideration.—An apportionment under sub-s. (3) may become necessary where, by virtue of s. 29, increment value duty is assessed upon a part only of property included in a transfer or lease, *vide* s. 2 (2), *supra*, p. 76. It may also become necessary for the purposes of sub-s. (3) of s. 2, *supra*, p. 77. There may be cases where a lease determines at different times in respect of different properties included in it, which might necessitate an apportionment for the purposes of s. 13 (2), *supra*, p. 122. The basis of apportionment is left to the Commissioners.

Appeal.—Section 33 gives to any person aggrieved a right of appeal against “any assessment or apportionment of the consideration, on any transfer or lease made by the Commissioners,” so that there is clearly an appeal against a decision of the Commissioners under any part of this section. The “owner” as defined in s. 41, *infra*, p. 303, of the land in question is clearly entitled to appeal against an apportionment so made. It is not clear to what extent a person interested in the land has any such right; but in certain cases it would seem that he may be a “person aggrieved” within the meaning of s. 33. The latter phrase appears wide enough to include any person the amount of duty payable by whom is increased or is likely to be increased in consequence of a decision under s. 32.

Appeals.

Appeals to
referees.

33.—(1) Except as expressly provided in this Part of this Act any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed,

where the Commissioners have power to make such an allowance under this Part of this Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act.

Provided that—

- (a) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and
- (b) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

(2) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the Court under this section, be final.

(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses

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Any order of the referee as to expenses may be made a rule of the High Court.

(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by Rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any duty claimed); and sub-sections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal:

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court, and in every such case any party shall have a right of appeal to the Court of Appeal.

(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

Those Rules shall be made by the Reference Committee subject to the Approval of the Treasury.

The Reference Committee for England shall consist

of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution. Sect. 33.
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The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.

The Reference Committee for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, and the President of the Surveyors' Institution.

The President of the Surveyors' Institution may, if he thinks fit, appoint any person, being a member of the council of that institution and having special knowledge of valuation in Ireland, to act in his place as a member of the Reference Committee in Ireland.

Except as expressly provided.—The opinion of the Commissioners is final as to certain matters arising under s. 17 (3), *supra*, p. 156, with respect to exemptions from undeveloped land duty.

Person Aggrieved.—The question who is the "person aggrieved" within the meaning of s. 33 must be determined in each case with reference to the subject-matter of the appeal. Thus, in an appeal against the first determination of total or site value, the owner within the meaning of s. 27 (7), *supra*, p. 242, and any person interested in the land within the meaning of s. 27 (5), *supra*, p. 241, are clearly persons who may appeal; while in other cases it may be that the only person who can be said to be aggrieved is an "owner" within the narrower meaning given to the term by s. 41, *infra*, p. 303.

It is submitted that persons against whom a deduction may be made under s. 21, *supra*, p. 177, in respect of mineral rights duty, may be persons aggrieved, and able to appeal against the assessment of that duty.

It does not appear that the Crown (or the Commissioners) can appeal to a referee under s. 33, for the Commissioners cannot be said to be persons aggrieved by any determination of their own, and no powers under Part I. are expressly given to any other officer of the Crown or public department, except in respect of one particular matter by s. 17 (3), *supra*, p. 156. The Commissioners can, of course, appear to defend appeals brought before the referee. And the Crown or the Commissioners are apparently enabled by sub-s. (4) to appeal to the High Court or the county court, if aggrieved by the decision of the referee.

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In the case of an appeal from a decision of the referee to the High Court or county court, the term "person aggrieved" is not, it is submitted, confined to the parties to the appeal before the referee. It appears possible in certain circumstances that a person who was not an appellant before the referee might be a person aggrieved by the referee's decision.

It may sometimes happen that a person is aggrieved because the value put upon his land or minerals is too low; cf. the remarks on original site value, *supra*, p. 247, and on the capital value of minerals, *supra*, p. 191.

Matters upon which an Appeal lies.—Some of the categories given in sub-s. (1) of matters in respect of which an appeal lies appear to overlap; thus "a refusal to make any allowance" may be an important point in an appeal "against the amount of any assessment"; but it appears, subject to any provision in the rules to be made under sub-s. (5), that a matter which might be raised in an appeal of one kind may be raised (if relevant thereto) in an appeal of another kind, except so far as is provided in sub-s. (1), proviso (b) with reference to the original total value and the original site value and the site value as ascertained under any subsequent valuation.

The following are the matters specified in s. 33 upon which the decision or determination of the Commissioners may be appealed against, together with references to provisions of the Act under which such decisions or determinations are to be given:—

(i.) "The first determination of the total value or site value of any land": the right of appeal with respect to the provisional valuation made under s. 26, *supra*, p. 229, is expressly given by sub-ss. (4) and (5) of s. 27, and is subject to the conditions imposed by s. 27; see notes to that section, *supra*, p. 245. The "person aggrieved" who may appeal against a provisional valuation is confined by proviso (a) to sub-s. (1) of s. 33 to a person who has made an objection thereto in accordance with s. 27, *vide supra*, p. 246. And the total value and site value shown in the provisional valuation shall be questioned only in an appeal limited by s. 27, and by the last-mentioned proviso, and shall not be questioned on an appeal against the assessment of duty, s. 33 (1), proviso (b).

These words appear to give a right of appeal against the determination of the original capital value of minerals under s. 23 (2), *supra*, p. 188, read with ss. 26 and 27.

An appeal appears to lie against a special ascertainment of the capital value of minerals under s. 22 (7), *supra*, p. 181, either by virtue of the present words, or of those next to be considered.

When the Commissioners acting under s. 15, *supra*, p. 135, for the purposes of reversion duty, determine the total value of the land in order to ascertain the value of the benefit as defined in s. 13 (2), *supra*, p. 122, such determination appears also to be a matter of appeal under the present words, or under those next to be discussed, according as the total value is determined for the first time or not. Neither proviso (a) nor proviso (b) of s. 33 (1) appears to apply to an appeal upon this matter.

As to original site value in the case of statutory companies, see s. 38 (2), *infra*, p. 287.

(ii.) "Any subsequent determination of the total value or site value of any land": under these words an appeal will lie against the site value shown in a periodical valuation under s. 28, *supra*, p. 250, even if the valuation is completed after the expiration of the year of valuation under the proviso to that section. By the terms of s. 28, the conditions and limitations applied to appeals by s. 27 and by the provisos (a) and (b) to s. 33 (1) are applied to appeals upon this matter also.

The present words appear to give a right of appeal against a special ascertainment of capital value under sub-s. (7) of s. 22, *supra*, p. 181, in cases where that capital is not ascertained for the first time.

(iii) "The amount of any assessment of duty." As to increment value duty generally, the Commissioners are to determine the amount of increment value deemed to be due (s. 3, *supra*, p. 83). See s. 4, s. 5, or s. 6 (3), *supra*, pp. 88, 98, 101, as to the manner of determining this amount in the cases provided for by those sections respectively. As to reversion duty, the power to assess the duty is given by s. 15 (4), *supra*, p. 135, and s. 17 of the Customs and Inland Revenue Act, 1885, which is applied by that sub-section (with the exception of any provisions relating to appeals) and is set out *infra*, p. 328. Undeveloped land duty is to be assessed by the Commissioners under s. 19 of the present Act, *supra*, p. 165. Mineral rights duty is to be assessed by the Commissioners by virtue of sub-s. (4) of s. 20. As to the increment value duty chargeable in respect of minerals comprised in a mining lease, or being worked, see s. 22, *supra*, p. 180. Section 27 (6), *supra*, p. 241, contains a provision under which any duty becoming leviable where the original total or the original site value has not been finally settled, may be assessed *ad interim*. The decision of the Commissioners under any of the provisions just cited appears to be a matter of appeal under the present words; but the original total and the original site value cannot be questioned on an appeal against the assessment of duty, nor can the site value ascertained under any subsequent valuation, s. 33 (1), proviso (b). Where, therefore, a grievance arises in respect of the increment value duty, on account of the original site value being incorrect (which is used as an element in determining the increment value, *supra*, p. 76); or in respect of the undeveloped land duty, on account of the original site value, *supra*, p. 243, or the site value as shown in a periodical valuation under s. 28, *supra*, p. 250, being too high, the only appeal open to the person aggrieved is one against the determination of that value, and the time for making an appeal of this nature must not be allowed to go by. The amount fixed by the Commissioners as the "site value on the occasion on which increment value is to be collected," as defined by s. 2 (2), may, however, it is submitted, be questioned on an appeal against the assessment of the increment value duty, but not so as to raise any question of the amount of original site value.

Questions of the value of real (including leasehold) property

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MATTERS
UPON WHICH
AN APPEAL
LIES.

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MATTERS
UPON WHICH
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arising under the Finance Act, 1894, are now the subject of appeal under the present section, Act of 1910, s. 60 (3), *infra*, p. 363.

(iv) "A refusal to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance." The Commissioners have power to make allowances for purposes of increment value duty under s. 2 (2), *supra*, p. 76; for purposes of reversion duty under s. 14 (3); for purposes of undeveloped land duty under s. 16 (3), proviso, *supra*, p. 128; in connection with increment value duty levied in respect of minerals under s. 22 by sub-s. (6) of that section, *supra*, p. 181; in ascertaining the capital value of minerals under s. 23 (1), *supra*, p. 188; for purposes of ascertaining total value and site value under s. 25, *supra*, p. 200. All these matters appear to be covered by the words quoted. See also s. 32 (2); but the matter there in question will more properly be raised upon appeals against the "assessment of the consideration on any transfer or lease," *vide infra*. The present words, or those quoted under (viii), *infra*, apply to appeals against the refusal to allow any exemption, or the grant of an insufficient exemption.

(v) "Any apportionment of the value of land." The Commissioners have power to apportion and reapportion original site value for various purposes under s. 29 (2), *supra*, p. 252, either of their own motion or upon being required to do so; and these powers apply also to site value fixed on a periodical valuation. For the purposes of reversion duty they may have to apportion the value of the benefit as between the value of a leasehold interest and the value of the fee simple (s. 13 (2), *supra*, p. 122). The words quoted appear to allow an appeal in each of these cases.

As to the conditions of an appeal against a matter decided under s. 29 (2), see note on "Appeal against provisional valuation," *infra*, p. 273.

(vi) "Any apportionment of duty." An apportionment of increment value duty may have to be made to satisfy the words "so far as it has not been paid on any previous occasion" at the end of s. 1; see note thereon, *supra*, p. 74; and power is given to the Commissioners by s. 3 (1), *supra*, p. 83, to determine the apportionment for this purpose. An apportionment of increment value duty or of reversion duty may also have to be made for the purposes of s. 14 (4), *supra*, p. 128; and of increment value duty for the purposes of s. 16 (3), *supra*, p. 140.

(vii) "Any assessment or apportionment of the consideration on any transfer or lease." Such an assessment or apportionment may be made under s. 32, *supra*, p. 258, and may have to be made for any of the purposes stated in the note on "Determination of value of consideration," *supra*, p. 258. See also under that section the note headed "Appeal," *supra*, p. 266.

(viii) "The determination of any other matter which the Commissioners are to determine or may determine under this part." Among such matters are those provided for in s. 2 (3), *supra*, p. 77; in s. 3 (5), *supra*, p. 84; in s. 4 (3) (b), *supra*, p. 89; in ss. 7-11, *supra*, p. 104 *sqq.*; in s. 14 (1), (2), (4), and (5), *supra*, p. 127; in s. 16 (2), provisos (a) and (b), and (3), proviso, *supra*, p. 139; in s. 17, *supra*,

p. 155 (excepting matters as to which the Commissioners' opinion is made final by s. 17 (3)); in s. 18, *supra*, p. 164; in s. 20 (2), proviso, *supra*, p. 167; in s. 21 (4), *supra*, p. 177; in s. 29 (1), *supra*, p. 252; in ss. 35-38, *infra*, p. 277; in s. 40, *infra*, p. 298; but it is not possible to make an exhaustive list. It has, however, been sought to indicate in the notes against each section the matters to be decided under it, in respect of which it is submitted that an appeal lies. Some of these matters may, no doubt, be raised by appeals under other words of the present sub-section; but it would appear that such a matter as, for instance, a claim to total exemption from any duty falls more naturally within the words now considered than within the phrase "the amount of any assessment of duty" or "the refusal to make any allowance."

The determination by the Commissioners under s. 29 (1) of the piece of land in respect of which duty shall be assessed will be an important subject of appeal, whether under these words, or under those authorizing an appeal against the amount of any assessment of duty.

Appeal against Provisional Valuation.—As to the matters dealt with in provisos (a) and (b), see s. 27, and notes thereto, *supra*, pp. 240, 242. An objection made under s. 27 is an indispensable preliminary to an appeal against a provisional valuation, even in cases where the "owner" within the meaning of s. 27 (7), has not been served with a copy of the provisional valuation of his land under sub-s. (1), or where the "person interested" within the meaning of s. 27 (5) has not had a copy delivered to him under that sub-section. The power given to the Commissioners under s. 27 (2) to extend the time for giving notice of objection in any special case is intended to provide for any cases of hardship that may arise. But if a person who is entitled, under either sub-s. (1) or sub-s. (5) of s. 27, to have a copy of the provisional valuation has for any reason failed to receive such a copy, he must apply to the Commissioners for an extended time in which to give notice of objection, and must then comply with the provisions of s. 27 as to objections. He cannot appeal without doing so.

Proviso (b) makes an appeal against the provisional valuation the only means of questioning the original total value or original site value. See also s. 12, *supra*, p. 121.

As to the effect of this proviso upon appeals relating to the original capital value of minerals, see *supra*. The provisions relating to the procedure on the valuation of land (including those provisions referred to in this note) are applied to apportionments and reapportionments of site value by s. 29 (3), *supra*, p. 252.

Original Total Value—Original Site Value.—See s. 27 and notes thereon, *supra*, p. 243.

Site Value as ascertained by any Subsequent Valuation.—This phrase appears to mean site value ascertained by any periodical valuation made under s. 28, *supra*, p. 250. The site value as so ascertained can only be questioned by an appeal against the valuation on which it has been ascertained. See notes to s. 28,

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supra, p. 252. Although the periodical valuation is not specifically mentioned in proviso (a) as it is in proviso (b), yet it appears that by the operation of s. 28 read with s. 27 (4) no appeal can be brought against the site value shown in any periodical valuation except on the part of a person who has made an objection thereto. As to the special ascertainment of the capital value of minerals under s. 22 (7), *vide supra*, p. 181.

Time and Manner of Appealing.—These and other matters are to be provided for by the rules to be made under sub-s. (5). Any provision so made which limits the time for appealing will have to be carefully complied with.

Appeal to Referee.—Any appeal brought under sub-s. (1) is to be referred to a referee under sub-s. (2), from whose decision there will be an appeal to the High Court or county court, as the case may be, under sub-s. (4). A panel of referees is to be appointed under s. 34, *infra*, p. 277; and each appeal will be referred to a member of the panel, who will be selected in manner provided by rules to be made under sub-s. (5). There is nothing in the Act itself to limit the selection to persons having local knowledge. These rules will also provide for the form in which the referee is to give the decision, and possibly for other matters relating to the conduct of such appeals by the referee, subject, however, to the provisions of sub-s. (3); under this sub-section, the matter is to be determined by the referee in consultation with the Commissioners and the appellant, or any persons nominated by either of those parties for this purpose. The representation of persons who cannot select representatives for themselves, *e.g.* infants and lunatics, appears to be provided for by the reference in s. 41, *infra*, p. 304, to ss. 60 and 62 of the Settled Land Act, 1882.

The referee does not appear to have power to refuse to hear any representative whoever he may be, who is duly nominated by the objector, unless the person appointed is an obviously improper person (*cf. R. v. St. Mary Abbotts Assessment Committee*, [1891] 1 Q. B. 378, *supra*, p. 244).

Apart from the provision that the matter is to be determined in consultation with the parties or their representatives, the nature of the proceedings before the referee is left at large by the Act. There is nothing to provide that there shall be a "hearing" (in the ordinary sense of the term) of the appeal before the referee. The Arbitration Act, 1889 (52 & 53 Vict. c. 49), does not appear to apply to these proceedings.

The referee has power to order the "expenses" of either side to be paid by the other. This word appears to cover more than merely legal costs. An order made by a referee awarding expenses may be made a rule of the High Court. The expression "rule" is one that is now little used in this connection, but what appears to be implied is that the party in whose favour the order for expenses is made may by taking out a summons for the purpose in the High Court, enforce the order as if it were an order made by the High Court. In the Judicature Act, 1873, "order" includes "rule," s. 109.

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Appeal to High Court or County Court.—Any person aggrieved by the decision of the referee may appeal to the High Court, or in certain small cases to the county court, under sub-s. (4). As to the meaning of “person aggrieved,” *vide supra*, p. 269. If the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed £500, the appeal may be taken to the county court, at the option apparently of the appellant, who may in this case be either a private individual or the Commissioners. As to the meaning of “total value” and “site value,” *vide supra*, p. 231. These phrases are here merely introduced to provide a measure of the county court’s jurisdiction; the appeal need not, in order to be brought in the county court, be directly concerned with total value or site value. The appeal under sub-s. (4), either to the High Court or county court, may be upon questions of law or fact or both.

In one case in which there is an appeal to a referee, his decision is made final and there is no appeal to the High Court or county court; namely, the question whether, when a covenant or agreement restricting the use of land has been entered into or made on or after 30th April, 1909, the restraint thereby imposed was when imposed desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood (s. 25 (3), *supra*, p. 200).

The appeal, whether brought in the county court or High Court, is subject to rules of court to be made on the matters mentioned in sub-s. (5), and to the following provisions of the Finance Act, 1894:—

Section 10.—(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court on any appeal under this section except with the leave of the High Court or Court of Appeal.

(3) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum, for such period as appears to the Court just.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum, to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

Under the Interpretation Act, 1889, s. 14, the expression “rules of court” when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

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OR COUNTY
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"The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of court."

Appeals from High Court or County Court.—The right of appeal from the High Court to the Court of Appeal is limited by the provisions of s. 10 (2) of the Finance Act, 1894, set out, *supra*, p. 275. The right itself arises under s. 19 of the Judicature Act, 1873, and is subject to the provisions of the Judicature Acts and of the rules of Court made thereunder.

From the decision of the County Court upon an appeal heard by it under sub-s. (4) there is a right of appeal to the Court of Appeal by either party. It appears to be intended that the appeal should be to the Court of Appeal direct, and that there should be no appeal to the High Court from the decision of the County Court. By s. 120 of the County Courts Act, 1888, it is provided that "If any party in any action or matter shall be dissatisfied with the determination or direction of the judge in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the rules of the Supreme Court regulating the procedure on appeals from inferior Courts to the High Court;" upon this section, cf. *Kirkheaton Local Board v. Ainley*, [1892] 2 Q. B. 274; *The Delano*, [1895] P. 40; and see also the County Court Rules, Order L., rule 36, and *Liverpool Corporation v. Peter Walker*, [1908] 2 K. B. 33.

If the view above indicated is correct, s. 120 of the County Courts Act does not apply to the present matter. But the question is not quite clear. The provisions of sub-s. (4) of the present section, as well as of s. 10 (2), (3), (4) of the Finance Act, 1894, will apply to an appeal from the County Court to the Court of Appeal.

The Rules to be made under sub-s. (5), though to be made subject to the approval of the Treasury, do not appear to be rules made by the Treasury within the meaning of s. 93, *infra*, p. 322.

Appointment
of referees to
hear appeals.

34.—(1) Such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland, and Ireland, respectively, by the Reference Committee, shall form a panel of persons to act as referees for the purposes of this part of this Act in England, Scotland, and Ireland, respectively, and persons having experience in the valuation of minerals shall be included in each panel.

(2) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct. Sect. 34.

The Reference Committee.—This is constituted by sub-s. (5) of s. 33.

Terms of the Appointment.—Scale of remuneration, etc., of the referees to be appointed under this section will be fixed by the rules to be made under s. 33 (5).

Supplemental.

35.—(1) No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority, or any statutory combination representative of two or more local or rating authorities, and any increment value duty in respect of any such land which would have been collected from the authority (whether on the occasion of the transfer on sale of the land or any interest in the land or the grant of a lease of the land or on the periodical occasions provided in this Act) shall, for the purposes of the provisions of this Act as to the collection of increment value duty, be deemed to have been paid. Exemption for land held by rating authorities.

(2) For the purposes of this section the expression “rating authority” means any body who have power to raise a rate or administer money raised by a rate, and the expression “rate” means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument, requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

No Duty, *i.e.* increment value duty under s. 1, *supra*, p. 59, and s. 22, *supra*, p. 180, reversion duty under s. 13, *supra*, p. 122, undeveloped land duty under s. 16, *supra*, p. 139, and mineral rights duty under s. 20, *supra*, p. 167. There is nothing in the Act to except land held by an authority within the scope of this section from the valuation of “all land in the United Kingdom”

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directed by s. 26, *supra*, p. 229; or from the periodical valuation of undeveloped land under s. 28, *supra*, p. 250. It may sometimes be necessary in order to secure the exemption, to take steps so that the land held by the authority may be separately valued under s. 26, *supra*, p. 229. Such an authority need not, however, deliver an account under s. 6; see sub-s. (5) thereof, *supra*, p. 102. Where land is held on lease by such an authority, reversion duty under s. 13, *supra*, p. 122, appears to be leviable on the determination of the lease, unless the lessor is for any reason exempt.

“Land”—“Interest in Land”—“Lease.”—Defined in s. 41, *infra*, p. 301.

Increment Value Duty.—The occasions here specified are those upon which increment value duty is collected by virtue of sub-ss. (a) and (c) of s. 1, *supra*, p. 59. The provision that increment value duty shall be deemed to have been paid is inserted in order to satisfy the words “so far as it has not been paid on any previous occasion” at the end of s. 1; see note on these words, *supra*, p. 74.

Increment value duty, leviable under s. 1 (a), is collected from the transferor or lessor (s. 4 (1), *supra*, p. 88). It appears, therefore, from the inclusion of the words in parenthesis in the present section, that no increment value duty is payable upon the transfer on sale of land or any interest in land, or the grant of a lease of land, where the land or interest was held by a rating authority up to the time of the transfer or lease, and has been transferred or leased by such authority, although after the transfer or lease the land or interest in land will not be held by such authority.

Rating Authority.—The definition of “rate” in sub-s. (2) appears to be founded upon that in the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), which was itself founded upon earlier enactments. Parish councils and parish meetings, rural and urban district councils, borough councils, county councils, boards of guardians, the metropolitan asylums board, the central body under the Unemployed Workmen Act, 1905 (5 Edw. 7, c. 18), burial boards, port sanitary authorities, highway boards (where these still exist) together with drainage boards and commissioners of sewers (unless where these latter are under some special Act which takes them out of the definition), appear all to be rating authorities within sub-s. (2). Water boards and sewerage boards would in many cases also be such authorities.

Statutory Combination.—Joint boards formed under s. 279 of the Public Health Act, 1875, for sewerage or water supply or for any other purposes within the meaning of that section, and port sanitary authorities formed under s. 287, 2nd para., appear to afford instances of a “statutory combination” such as are here described, but would probably be within the definition of “rating authority.” A combination of local authorities under s. 285 appears to be such a “statutory authority,” and may, perhaps, not always be a “rating authority.” See also s. 286 of the same Act. There may be many examples of such statutory combinations under local Acts.

36. Where in pursuance of any public general or local Act any capital sum or any instalment of a capital sum has been paid to any rating authority in respect of the increased or enhanced value of any land due to any improvements made or other action taken by the authority, the amount of that capital sum or instalment shall be deducted from any increment value of the land for the purposes of the collection of increment value duty and from the site value of the land for the purposes of the collection of undeveloped land duty, and from the value of the benefit accruing to the lessor for the purposes of reversion duty, and in the case of increment value duty the duty on the amount deducted shall be deemed to have been paid. **Sect. 36.**

Deduction from increment value of sum paid to rating authority in respect of increase in value.

Charge for Improvements.—Certain local Acts under which charges in respect of increased or enhanced value due to any improvements made or other action taken by a local authority are referred to, *supra*, p. 204. There is no deduction allowed by this section in respect of any charge which is not a capital sum or an instalment of a capital sum, and a charge made upon annual value in respect of the matters here mentioned is apparently outside the benefit of this section; but see the deduction made as to "fixed charges" in ascertaining total value and site value, s. 25 (3), *supra*, p. 200.

Under the Housing, Town Planning, etc., Act, 1909, s. 58 (3), where by the making of any town planning scheme, any property is increased in value, the responsible authority is entitled under certain conditions to recover from any person whose property is so increased one half of the amount of the increase; and by the 4th Sched. r. 19, read with s. 55 (1), the Local Government Board may provide for charging such a sum on the inheritance of that land. A sum so charged is apparently within the purview of the present section.

As to the classification of Acts of Parliament, *vide infra*, p. 289.

The capital sum or instalment must have been paid before any deduction can be made under this section.

Rating Authority.—Defined in s. 35 for the purposes of that section.

Increment Value.—The amount of the payment made is to be deducted from any increment value for the purposes of increment value duty. As to "increment value," see s. 2 (2) and notes, *supra*, pp. 76, 77.

The effect of the provision that the amount to be deducted shall be deemed to have been paid will be seen in the note to s. 1, "so far as it has not been paid on any previous occasion," *supra*, p. 74. See also s. 3 (1), *supra*, p. 83.

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Reversion Duty.—The reversion duty is levied under s. 13 (1), and the value of the benefit on which reversion duty is charged is ascertained upon the principles laid down in s. 13 (2), *supra*, p. 122.

Special provision for land held for charitable purposes, etc.

37.—(1) No reversion duty or undeveloped land duty under this Part of this Act shall be charged in respect of land or any interest in land held by or on behalf of any governing body constituted for charitable purposes while the land is occupied and used by such a body for the purposes of that body, and increment value duty shall not be collected on any periodical occasion in respect of the fee simple of or any interest in any land held for the purposes of such a body, whether it is occupied or used by that body or not, without prejudice, however, to the collection of the duty on any other occasion.

The expression “governing body constituted for charitable purposes” includes any person or body of persons who have the right of holding, or any power of government of, or management over, any property appropriated for charitable purposes (including property appropriated for the purpose of any of the naval or military forces of the Crown), and includes any corporation sole and all universities, colleges, schools, and other institutions for the promotion of literature, science, or art.

(2) This section shall apply to the fee simple of, or any interest in, any land held by a registered society or by a company within the meaning of the Companies Consolidation Act, 1908, or any body of persons incorporated by special Act, if that company or body are by their memorandum or Act precluded from dividing any profit amongst their members, as if the purposes of the society, company, or body of persons were charitable purposes.

In this provision the expression “registered society”

means any society or body of persons who are registered, or whose rules are certified or registered, by a registrar of friendly societies in pursuance of any Act of Parliament, and who by their rules make provision for the benefits set out in section eight, sub-section one, of the Friendly Societies Act, 1896, and where the contract between the society and the member is of a permanent character.

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Reversion Duty—Undeveloped Land Duty.—A governing body, a registered society, company or body within the meaning of the present section, is relieved thereby from reversion duty levied under s. 13, subject to the provisions of s. 14, *supra*, pp. 122, 127, in respect of land or any interest in land, held by the governing body, etc., and occupied and used by it for its purposes. There appears to be nothing in the section excusing the payment of reversion duty by a lessor on the determination of a lease held by such a governing body, etc., where on the determination of such lease the land ceases to be occupied and used by such a governing body, etc., for its purposes. Such a governing body, etc., appears, however, to be exempt from the payment of reversion duty on the determination of a lease where, immediately upon the determination, the land “held” by the governing body, etc., is occupied and used by it for its purposes. But such cases cannot be of frequent occurrence. Undeveloped land duty (which is leviable under ss. 16-19, *supra*, pp. 138 *sqq.*), is not chargeable upon such a governing body, etc., in respect of land or any interest in land held by it while occupied and used for the purposes of the governing body, etc., which holds it. Both reversion duty and undeveloped land duty are leviable in respect of land that is “held” by the governing body, etc., but is not occupied and used for its purposes; for instance, land which is let by the governing body, etc., for the purposes of revenue.

Increment Value Duty.—Increment value duty is not to be collected on any of the periodical occasions specified in s. 1 (c), *supra*, p. 59, in respect of any land or interest in land held for the purposes of such a governing body, etc., whether occupied or used by it or not. The exemption from increment value duty is thus not limited to the same land as that which is within the benefit of the exemption from reversion duty and undeveloped land duty. Land leased to some other person by the governing body, etc., may even be within the benefit of the exemption from increment value duty. The increment value duty which is leviable upon the occasions specified in s. 1 (a), *supra*, p. 76, is, however, leviable in respect of any land or interest in land so held; and where any land or interest in land so held is property passing on death within the meaning of s. 1 (b), *supra*, p. 76, increment value duty is also leviable on the occasion there specified. There is no provision here (as in s. 35, *supra*, p. 277), that the increment value duty excused under this section shall be deemed to have been paid; when, therefore, increment value duty becomes payable in respect of any land or interest

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Thus, in cases where no increment value duty has previously been paid, the duty will be charged on the whole increment value, representing the difference between the original site value and the site value on the occasion of the transfer on sale or the grant of the lease (see s. 2, *supra*, p. 76), subject to the provisions of s. 3 (5), *supra*, p. 84. Where increment value has actually been paid on any previous occasion, credit will be given for the amount of duty so paid (s. 3 (1), *supra*, p. 83).

No account need be delivered by a governing body, etc., exempted under the present section, on any periodical occasion referred to in s. 6 in respect of the fee simple of or any interest in land held for the purposes of the body or society (s. 6 (5), *supra*, p. 102).

Examples.—(*a*) A college at Cambridge holds for its purposes a piece of land whose original site value is £1000. No increment value duty is payable on the periodical occasion occurring in 1914. The land is sold in 1920, the site value on the occasion of the transfer on sale being £1500. The increment value is £500, and duty is payable on the whole of that sum.

(*b*) Suppose a lease of the land for twenty-one years was granted in 1910 and the increment value duty paid on that occasion. Upon the sale in 1920 of the fee simple subject to the unexpired term of the lease, a part of the duty on £500 will be collected in proportion to the value of the interest sold (s. 3 (3)); and credit will also be given for the duty paid on the grant of the lease in 1910.

No relief is given by the present section in respect of the mineral rights duty.

Land—Interest in Land.—These are defined in s. 41, *infra*, pp. 301, 302. The word "held" in sub-ss. (1) and (2) apparently implies that the land, or interest in land, as the case may be, may be held under a title of any kind. Thus land held by the managers of a school on lease from a body of trustees would be included (Commons Debates, Official Report, 1909, Vol. 11, col. 1008). As to the meaning of "occupied," see note on "separate occupation," *infra*, p. 232. The purposes of a governing body are the charitable purposes for which it is constituted; those of a registered society are the purposes for which it is registered. Those of a company or body of persons within the meaning of sub-s. (2) are the purposes specified in their memorandum or Act.

Valuation.—The land referred to in the present section will be included in the valuation of "all land in the United Kingdom" to be made under s. 26, *supra*, p. 229, and in the periodical valuations

of undeveloped land to be made under s. 28, *supra*, p. 250. There is no special provision for ascertaining the value of such land, apart from the general provisions in ss. 2 (2), 26, 27, 28. The governing body, or registered society, will have the same rights of objecting and appealing in respect of the valuation as any other owner or "person interested" under s. 27, *supra*, p. 240. In order to obtain the benefit of the exemption, it may be necessary to secure the separate valuation of particular pieces of land under s. 26; see note thereon, *supra*, p. 238.

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VALUATION.

Appeal.—The body or society has a right of appeal under s. 33 (1), *supra*, p. 266, from a decision of the Commissioners refusing to allow an exemption claimed under this section.

Governing Body.—Where the property is held by a trustee or trustees, but some other person or body of persons manages the property or carries into effect the charitable purposes, both the trustee or trustees, and the managing person or body, come within the definition of the governing body in sub-s. (1). If the view submitted at p. 230 is correct, that land held for the purposes of the Crown is not liable to any of the duties under this Act, the words "(including property appropriated for the purpose of any of the naval or military forces of the Crown)" appear to be superfluous. But it does not follow from their inclusion that land otherwise appropriated for the purposes of the Crown is within the purview of the duty (*Pearson v. Holborn Union*, [1893] 1 Q. B. 389). Note that a "governing body" as here defined may be a single person, whether a corporation sole or not. It is submitted, therefore, that a parson or vicar is entitled to the exemption given by the section, in respect of land held by him as such and occupied and used by him for the purposes of his parish, including apparently his own maintenance (Commons Debates, Official Report, 1909, Vol. 12, cols. 151, 152). See also the note on body corporate or unincorporate, *supra*, pp. 72, 73.

Charitable Purposes.—"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor—as indeed every charity that deserves the name must do either directly or indirectly" (*Special Commissioners of Income Tax v. Pemsel*, [1891] A. C. 531, *per* Lord MACNAGHTEN at p. 583). It was there held that the words "charitable purposes" in the Income Tax Act, 1842, Sched. A, s. 61. No. VI., were to be construed according to the legal sense of the word "charity" as thus expounded; and that lands vested in trustees for maintaining the Moravian missions among the heathen were "lands vested in trustees for charitable purposes," and the profits applied to the purpose mentioned were "applied to charitable purposes" within the meaning of that enactment, and therefore exempt from income tax thereunder. Upon the authority of the case last cited, the University College of North Wales (the objects

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of which are (*inter alia*) to provide instruction in all the branches of a liberal education except theology, and also to give such technical instruction as may be of immediate service in professional or commercial life, and which devotes its revenues in part to the general purposes of the college and in part to providing scholarships, has been held to be exempt from income tax in respect of the whole of its property, under the above enactment, and under Sched. C, s. 88, Third Rule, and under Sched. D, s. 105, of the Act of 1842: both the latter enactments confine the exemption to profits, etc., “in so far as the same shall be applied to charitable purposes only” (*R. v. Special Commissioners of Income Tax*, [1909] W. N. 57.) It is submitted, therefore, that any of the purposes enumerated by Lord MACNAGHTEN in *Pemsel’s Case*, in the passage cited, are “charitable purposes” within the meaning of the present section. This was the intention of the Legislature (Commons Debates, Official Report, 1909, Vol. 11, cols. 1009–10, 1018–19), and the specific words including universities, etc., serve to make this clear. On the other hand, the phrase appears in s. 11 (3) of the Customs and Inland Revenue Act, 1885 (set out *infra*, p. 284), and it has been held under that section that a piece of land called the “Intack,” held in trust for the freemen of a ward, who enjoyed the exclusive right of pasturage over it on payment of certain fees, poor freemen and freemen’s widows who did not exercise their rights of pasturage receiving certain sums which apparently exhausted the profits, was not property appropriated and applied to any charitable purpose within the meaning of s. 11 (3); the judgment as respects the Intack disregards the payments to poor freemen and widows (*Inland Revenue v. Scott*, [1892] 2 Q. B. 152). The words “charitable purposes” in s. 11 (3) were held not to have the wide meaning put upon them in *Pemsel’s Case*, because they were in s. 11 (3) succeeded by words of more limited scope, and were placed between specific exemptions which, if used in their widest sense, they would be sufficient to cover. No such limiting words are to be found in the present section, and the specific exemptions in s. 35 and s. 38 of the present Act do not appear to affect the interpretation of s. 37. It is submitted, therefore, that the principles of *Pemsel’s Case* apply to the words in s. 37, and not those of *Inland Revenue v. Scott*.

The carrying on of a provident society has been held not to be a charitable purpose within the meaning of s. 11 (3) of the Act of 1885 (*Incorporation of Tailors v. Inland Revenue* (1887), 14 R. 729).

Appropriated.—The Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), contains in s. 11 (3) an exemption from the duty imposed by that section, in favour of “Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, for any charitable purpose, or for the promotion of education, literature, science, or the fine arts.” In construing this provision it has been held that the word “appropriated” does not mean exclusively appropriated, and that it is sufficient if the property or income is, in the main and as its chief object, devoted to one of the purposes specified, although there may also be some subsidiary purpose or object. Consequently, the Institution of Civil Engineers was entitled to

the exemption in respect of its property, which was applied substantially for the promotion of engineering science, although the action of the institution incidentally benefited the profession to which its members belonged (*Inland Revenue v. Forrest* (1890), 15 A. C. 334). On the other hand, the Royal College of Surgeons had two main objects, neither of which could be described as merely subsidiary to the other; one, the promotion of the science of surgery, and the other the promotion of the interests of surgeons and surgical students, and the examination of the latter. The College was held to be exempt only in respect of the property and income appropriated and applied to the first of the two main objects (*In re Royal College of Surgeons of England*, [1899] 1 Q. B. 871). It is submitted that the principles of the cases cited apply to the present section, and that the exemption does not fail though the property appropriated for charitable purposes is also applied to some other purpose, provided that the charitable purpose is the main purpose, and that the other purpose is merely subsidiary thereto.

The word "legally" does not appear here as it does in s. 11 (3) of the Act of 1885, and it is therefore submitted that actual appropriation is sufficient, and that the property need not be "so appropriated as to create a legal obligation upon the part of its administrators to apply it in a particular manner" (cf. *In re Royal College of Surgeons of England*, [1899] 1 Q. B., at p. 883).

Other Institutions for the Promotion of Literature, Science, and Art.—These institutions must, it is submitted, be *ejusdem generis* with universities, colleges, or schools. It is submitted, however, that as long as an institution has for its main object the promotion of literature, science, or art, the exemption will not be defeated if it also has some subsidiary object, as in *Inland Revenue v. Forrest*, *supra*, p. 285; but see also *In re Royal College of Surgeons*, *supra*, p. 285. As to the meaning of literature, science, and art, cf. the following (among other) cases decided upon the Scientific Societies Act, 1843, s. 1; but note that that enactment differs in several respects from the present: *Savoy Overseers v. Art Union of London*, [1896] A. C. 296; *Royal College of Music v. Westminster Vestry*, [1898] 1 Q. B. 809; *Mayor, etc., of Liverpool v. West Derby Union* (1905), 69 J. P. 277. See also Ryde on Rating, Chap. VIII.

Registered Society.—The societies described in the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 8; 1908 (8 Edw. 7, c. 32), s. 1, may be registered by a registrar of Friendly Societies. Powers of registering industrial and provident societies are given to a registrar by the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), ss. 4-6, 79. Trade unions are registered by a registrar under the Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 13, and the Friendly Societies Act, 1896, ss. 1, 2. Shop clubs and thrift funds may be certified by a registrar under the Shop Clubs Act, 1902 (2 Edw. 7, c. 21).

By virtue of the Friendly Societies Act, 1896, ss. 2, 4, the rules of societies of the following classes are now registered by a registrar of friendly societies: the building societies whose rules are registered under the Building Societies Act, 1874 (37 & 38 Vict.

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c. 42), s. 17; loan societies, Loan Societies Act, 1840 (3 & 4 Vict. c. 110), s. 4; societies instituted for purpose of science, literature, or the fine arts, within the meaning of the Scientific Societies Act, 1843 (6 & 7 Vict. c. 36), s. 1. The power of certifying rules of savings banks is transferred to the registrar by the Savings Banks (Barrister) Act, 1876 (39 & 40 Vict. c. 52), s. 2.

It is not clear whether such unincorporated benefit building societies as had their rules certified under the Building Societies Act, 1836 (6 & 7 Will. 4, c. 32), s. 4, are societies whose rules are certified by a registrar, but this appears to be so. See Friendly Societies Act, 1896, s. 2; Interpretation Act, 1889, s. 38.

Section 8 (1) of the Friendly Societies Act, 1896, is as follows:—

Societies which may be registered. Societies (in this Act called friendly societies) for the purpose of providing by voluntary subscriptions of the members thereof, with or without the aid of donations, for—

- (a) the relief or maintenance of the members, their husbands, wives, children, fathers, mothers, brothers, or sisters, nephews or nieces, or wards being orphans, during sickness or other infirmity, whether bodily or mental, in old age (which shall mean any age after fifty) or in widowhood, or for the relief or maintenance of the orphan children of members during minority: or
- (b) insuring money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the husband, wife, or child of a member, or of the widow of a deceased member, or, as respects persons of the Jewish persuasion, for the payment of a sum of money during the period of confined mourning; or
- (c) the relief or maintenance of the members when on travel in search of employment, or when in distressed circumstances, or in case of shipwreck, or loss or damage of or to boats or nets; or
- (d) the endowment of members or nominees of members at any age; or
- (e) the insurance against fire, to any amount not exceeding fifteen pounds, of the tools or implements of the trade or calling of the members.

Provided that a friendly society which contracts with any person for the insurance of an annuity exceeding fifty pounds per annum, or of a gross sum exceeding two hundred pounds, shall not be registered under this Act.

By s. 1 of the Friendly Societies Act, 1908,

Amendment of s. 8 of principal Act as to societies which may be registered. to the descriptions of societies which may be registered as friendly societies, contained in sub-s. (1) of s. 8 of the Friendly Societies Act, 1896, the following paragraph shall be added after paragraph (e):

“or

- (f) guaranteeing the performance of their duties by officers and servants of the society or any branch thereof.”

Company, etc.—A company within the Companies Consolidation Act, 1908, means (s. 285), a company formed and registered

under that Act or under the Joint Stock Companies Acts or under the Companies Act, 1862. As to the meaning of Special Act, see note to s. 38 (4) of the present Act, *infra*, p. 289. And as to the dividing of profit, cf. s. 9, and see note thereto, *supra*, p. 116. It is submitted that the memorandum of association or Act must expressly prohibit such a division (cf. *R. v. Jones* (1846), 8 Q. B. 719). The words "or by a company" to the end of the paragraph were inserted mainly in the interests of the National Trust for the Preservation of Places of Historical and National Interest, which was incorporated by 7 Edw. 7, ch. cxxxvi.

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ETC.

38.—(1) Neither increment value duty, reversion duty, nor undeveloped land duty shall be charged in respect of any land whilst it is held by a statutory company for the purposes of their undertaking and cannot be appropriated by the company except to those purposes; but nothing in this provision shall prevent the collection of increment value duty when any such land is sold or ceases to be so held.

Special pro-
vision for
statutory
companies.

This provision shall not be construed so as to exclude from the benefit thereof land held by a statutory company which is intended to be ultimately appropriated for the purpose of works forming or to form part of the company's undertaking, but, pending the carrying out of those works, is used for other purposes.

(2) The Commissioners shall not require a statutory company to make any returns with respect to any such land for the purpose of the provisions of this Part of this Act as to valuation other than as to the actual cost to the company of the land, and that cost shall, for the purposes of this Part of this Act, be substituted for the original site value of the land.

(3) For the purposes of the Lands Clauses Acts, as incorporated with any special Act, the amount (if any) payable by the transferor as increment value duty shall not be treated as part of the costs or expenses of a conveyance of land, and shall not be taken into account in assessing the compensation to be paid to the transferor.

(4) For the purposes of this section the expression "statutory company" means any railway company, canal company, dock company, water company, or

Sect. 38. — other company who are for the time being authorised under any special Act to construct, work, or carry on any railway, canal, dock, water, or other public undertaking, and includes any person or body of persons so authorised; and the expression “special Act” includes any Provisional Order or order having the force of an Act of Parliament.

Duties in respect of which the Exemption arises.—The increment value duty which would but for this section be levied upon statutory companies is that which is due upon the occasions specified in s. 1 (a) and (c), *supra*, pp. 61, 71. The proviso to sub-s. (1) of the present section shows, however, that increment value duty may be levied under s. 1 (a) upon the transfer on sale of any land described in sub-s. (1); and also upon the transfer on sale of any interest in the land, or the grant of any lease for a term of years exceeding fourteen years, where the effect of such transfer on sale or lease is that the land ceases to be held as provided in sub-s. (1); this is subject to the saving in the second paragraph of sub-s. (1). Increment value duty on the periodical occasions referred to in s. 1 (c) will not be levied from statutory companies in respect of any land as described in sub-s. (1); but will be levied in respect of any land held by them which does not come within that description, subject always to the saving in the second paragraph. There is no provision here (as in s. 35) that the increment value duty excused under this section shall be deemed to have been paid. When such duty becomes payable in respect of land which on former occasions received the benefit of the exemption under this section, no deduction will be made in respect of those occasions. See note to s. 3 (1), *supra*, p. 85; and cf. Examples to s. 37, at p. 282, *supra*.

Reversion duty is generally leviable under s. 13, *supra*, p. 122, on the determination of any lease of land, subject to the provisions of s. 14, *supra*, p. 127; see also s. 22 (1), *supra*, p. 179. The exemption, therefore, conferred in respect of reversion duty would appear to apply in practice chiefly to the land described in the saving in the second paragraph of s. 38 (1); thus, if a company let some of their land pending its ultimate appropriation for the purpose of works forming part of their undertaking, reversion duty will not be leviable on the determination of the lease. There is nothing in s. 38 to excuse the payment of reversion duty by a lessor on the determination of a lease to a statutory company, unless indeed the lessor be a statutory company which is entitled to the exemption and the other conditions of the exemption are fulfilled.

Undeveloped land duty is levied under the provisions of ss. 16–19, *supra*, pp. 136–165.

There is no exemption under this section as regards mineral rights duty.

Statutory Company.—In order to be a statutory company

within the present section, a company, person, or body of persons must be "authorised under any special Act" to perform the matters referred to in sub-s. (4). It is not necessary that the company or body of persons should have been incorporated by a special Act, as long as they derive the particular authority in question from such an Act; nor that the person so authorized should be a corporation sole. In a great number of cases, however, a company or body of persons which derives such authority from a special Act has also been incorporated by Act of Parliament, as in the cases of the great railway companies. A body of persons within the meaning of sub-s. (4) would appear to include such a body as a dock board, if authorized as here provided by a special Act. But many such bodies of persons may be also local or rating authorities, and as such entitled to the larger exemption created by s. 35, *supra*, p. 277.

The words "other public undertaking" would appear to include such matters as gas or electricity or tramway undertakings.

Special Act.—The term "special Act" is now chiefly used to denote Acts which authorize the construction or carrying on of a particular undertaking, in contradistinction to the general Acts, such as the Lands Clauses Act, 1845, and the Railways Clauses Act, 1845, whose clauses it incorporates for the purposes of the particular undertaking, Craies on Statute Law, p. 57, and the term as used in the present section appears to include that meaning. There is no separate category for "Special Acts" in the classification of Acts of Parliament into "Public General Acts, Local Acts, Private Acts," Ilbert, Legislative Methods and Forms, p. 26. But special Acts such as above described are usually introduced as private bills, and promulgated and printed as local Acts.

All Acts passed since 1850 are to be judicially noticed as public Acts, unless the contrary is expressly provided in the Act (Interpretation Act, 1889, ss. 9, 39).

Provisional Orders.—Under various Acts of Parliament many of the Government Departments are empowered to issue provisional orders for the construction and carrying on of particular undertakings. Provisional orders are required to be confirmed by Parliament, and are for that purpose scheduled to a bill brought in by the Department. An account of the powers of the various Departments in this respect will be found in May's Parliamentary Practice, 11th Edn., Chapter XXX.

An example of an order such as is described in sub-s. (4), which has the force of an Act of Parliament and does not need confirmation by Parliament, will be found in an order authorizing a light railway under the Light Railways Act, 1896 (59 & 60 Vict. c. 48).

A difficulty may arise as to an authority to carry on an undertaking given by a public Act like the Metropolis Water Act, 1902 (2 Edw. 7, c. 41), or the Port of London Act, 1908 (8 Edw. 7, c. 68); but bodies of persons so authorized will generally be entitled, in any case, to the exemption given by s. 35 or s. 37, *supra*, pp. 277, 280.

Land within the Purview of the Section.—Land is defined in s. 41, *infra*, p. 301. Subject to the saving in s. 33 (1), the land

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RESPECT OF
WHICH THE
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Sect. 38. in respect of which the exemption arises must be actually held by a statutory company for the purposes of their undertaking, and must not be capable of being appropriated by the company except to those purposes. It seems to be immaterial whether the land be "held" in fee simple, or under a lease, or under any other title. Land "held for the purposes of the undertaking" must, it would appear, be held for some purpose specified in the special Act or special Acts of the statutory company, or in any general Act incorporated thereby, so far as it is incorporated, such as the Railways Clauses Act, 1845, the Waterworks Clauses Act, 1847, the Harbours, Docks, and Piers Clauses Act, 1847, or in any general Act applying to the company; cf. *Simpson v. South Staffordshire Waterworks Co.* (1865), 34 L. J. Ch. 380; *Herron v. Rathmines Commissioners*, [1892] A. C. 498. These purposes appear to include not only those which the statutory company are compellable to perform, but all those which they have power to carry out under the Acts in question; cf. *Beauchamp (Lord) v. Great Western Rail. Co.* (1868), L. R. 3 Ch. 745, 750; *Wilkinson v. Hull, etc., Rail. Co.* (1882), 20 Ch. D. 323; thus, where the Acts in question leave to the statutory company a discretion as to the most convenient mode of carrying out the purposes of the Acts (as does the Railways Clauses Act, 1845, s. 68, with respect to certain accommodation works), and the company exercise that discretion *bonâ fide*, the land used for the purpose of carrying out the mode adopted, will be land held for the purposes of the undertaking, *ibid.* These and other cases decided under the Lands Clauses Act, 1845, and the Railways Clauses Act, 1845, are fully discussed in Browne and Allan on Compensation, 2nd Edn., pp. 31-33, 291-291. The statutes conferring the powers in question will be construed more narrowly where the "statutory company" is a trading concern entitled to make a profit, and more widely where it is a body acting entirely for the public benefit, and debarred by statute from making a profit for its members (*North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909), as in the case of many dock boards and water boards.

"Land which cannot be appropriated by the company except to the purposes of the undertaking" appears to mean, in the first instance, land which the statutory company are precluded by the Acts already mentioned from appropriating except to those purposes; but it would appear also to include land which it is physically impossible to appropriate otherwise. It is not likely, however, that there will be many cases of land of the latter class which is not also included in the former class.

It is submitted that land which a statutory company appropriates to some other person for a purpose which is subsidiary to the purposes of the company's undertaking, is not outside the benefit of the exemption. Land is frequently so appropriated, as where a dock company appropriates dock or quay space to a carrying company (cf. *Allan v. Liverpool Overseers* (1874), L. R. 9 Q. B. 180; *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, *supra*, p. 236); or where a railway company appropriates stables at a station to coal owners using the railway (cf. *London and North Western Rail. Co. v. Buckmaster* (1875), L. R. 10 Q. B. 70, 441), or a part of a station

platform to the keeper of a bookstall (cf. *Smith v. Lambeth Assessment Committee* (1882), 10 Q. B. D. 327, *supra*, p. 236).

The saving in the second paragraph of sub-s. (1) applies to land which is used for purposes other than those of the statutory company, and not necessarily subsidiary thereto. It appears to apply even where land "held" by the company is let on lease or underlease to some other person. A good example of such land as appears to be intended by the saving is to be found in *Macfie v. Callander and Oban Rail. Co.*, [1898] A. C. 270, where land which was likely in the future to be required for the enlargement of a railway station or its accesses, and a part of which had been leased to the Post Office for five years, was held not to be "superfluous land" within the meaning of the Lands Clauses (Scotland) Act, 1845, 8 & 9 Vict. c. 19, s. 120. Cf. also *Hooper v. Bourne* (1877), 3 Q. B. D. 258; (1880), 5 A. C. 1.

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LAND WITHIN
THE PURVIEW
OF THE
SECTION.

Minerals.—It is submitted that the word "land" in the present section includes minerals, and that therefore if minerals are held by a statutory company for the purposes of their undertaking, and cannot be appropriated by the company except to those purposes, or if minerals are intended to be ultimately appropriated for the purpose of works forming or to form part of the company's undertaking, but, pending the carrying out of the works, are used for other purposes, the company will enjoy the same exemption in respect of those minerals as they do in respect of land under sub-s. (1). As to increment value duty in respect of minerals, see s. 22, *supra*, p. 182. Such cases may arise, *e.g.* where a railway company holds coal for the purpose of its undertaking.

There is no exemption under this section from mineral rights duty.

Appeal.—A statutory company has a right of appeal under s. 33 (1), *supra*, p. 266, against a refusal by the Commissioners to allow an exemption claimed under this section.

Returns and Accounts.—The returns which the statutory company are, by sub-s. (2), relieved from delivering with respect to the land here in question, except as there provided, are apparently those prescribed in s. 26 (2), *supra*, p. 229, and include returns (such as are there prescribed) with respect to minerals; see s. 23 (2) and (3) *supra*, p. 188; in certain cases a statutory company may be well advised to furnish the returns as to minerals described in s. 23 (2), for the reasons given in the note thereto, *supra*, p. 190. The accounts prescribed by s. 6 (2), *supra*, p. 101, for the purposes of increment value duty, are not required to be furnished by statutory companies in respect to any land as to which they are exempt from increment value duty upon any periodical occasion, s. 6 (5), *supra*, p. 102. Nor does it appear that, when exempt from reversion duty, they need deliver an account under s. 15 (2), *supra*, p. 135. But if in any case they are liable to pay either of these duties (see note on "duties in respect of which the exemption arises," *supra*), they must furnish the returns and account prescribed.

There is nothing in this section to exempt statutory companies from the obligation to furnish the returns required under s. 20 (3),

Sect. 33. *supra*, p. 168, for the purpose of ascertaining the rental value of minerals.

RETURNS AND ACCOUNTS. Note that it is the actual cost of the *land* that is to be shown in the return. As to what such cost includes, see note on consideration "under Lands Clauses Acts, etc.," *supra*, p. 261.

Original Site Value.—As to the meaning and effect of this expression, see note to s. 27, *supra*, p. 243. All land in the United Kingdom is to be shown in the valuation to be made under s. 26, whether it comes within the present section or not. The actual cost to the company of the land, and not necessarily what is shown in the return as such, is to be substituted for the original site value. It is therefore apparently for the Commissioners to decide what is the actual cost of the land; and it is submitted that, if the statutory company consider the Commissioners' decision to be incorrect, they have the same rights of objection and appeal as are given to an ordinary "owner" under s. 27 and s. 33, *supra* pp. 249, 266. But the final words of s. 38 (2) are so concise as to be extremely obscure. It may sometimes be necessary, in order to secure the benefit of the exemption, to secure a separate valuation of particular pieces of land in the valuation made under s. 26, *supra*, p. 229. As to apportionment of original site value, see s. 29 (2), *supra* p. 252. As the reference in these words is only to "original site value," statutory companies appear to be in the same position as ordinary persons with regard to the periodical valuation of undeveloped land made under s. 28, *supra*, p. 250.

Where the statutory company holds land consisting of, or comprising, minerals, it is submitted that the actual cost to the company of the minerals, or of the land comprising the minerals, as the case may be, should be shown in the return made by the company under s. 23 (2), and that the actual cost so shown will be substituted for the original capital value of the minerals, see s. 23 (4), *infra*, p. 189.

8 & 9 Vict.
c. 18.
23 & 24 Vict.
c. 106.
32 & 33 Vict.
c. 18.
46 & 47 Vict.
c. 15.
8 & 9 Vict.
c. 19.
23 & 24 Vict.
c. 106.
8 & 9 Vict.
c. 18.
23 & 24 Vict.
c. 97.
14 & 15 Vict.
c. 70.
27 & 28 Vict.
c. 71.
31 & 32 Vict.
c. 70.

The Lands Clauses Acts.—By virtue of s. 23 of the Interpretation Act, 1889, this expression as used here means—

(a) as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same; and

(b) as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and any Acts for the time being in force amending the same; and

(c) as respects Ireland, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, and any Acts for the time being in force amending the same.

To the Acts referred to in paragraph (a) should now be added the Lands Clauses (Taxation of Costs) Act, 1895, 58 & 59 Vict. c. 11.

As to costs of a conveyance under the Lands Clauses Act,

1845, see ss. 82 and 83 thereof. The provisions for assessment of compensation will be found collected in Browne and Allan on Compensation, 2nd Ed., pp. 46, 47.

“Transferor” is defined in s. 41, *infra*, p. 303.

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THE LANDS
CLAUSES
ACTS.

39.—(1) Where the fee simple of any land or any interest in land in respect of which increment value duty or reversion duty is charged is settled land within the meaning of the Settled Land Act, 1882, or is vested in a trustee, and the tenant for life or persons having the powers of a tenant for life or the trustee is the person who is liable to pay any sums on account of either of these duties, he shall be entitled to charge by deed upon the land or interest in land any amount paid by him or which he may then be or may thereafter become liable to pay in respect of either of these duties, and the amount of any expenditure which he may have reasonably incurred in connection with the valuation, and the benefit of any such charge may be transferred in like manner as a mortgage.

Power to
charge duty
on land in
certain cases.
45 & 46 Vict.
c. 38.

(2) In the case of settled land a deed executed for the purposes of this section shall not take effect until notice thereof has been given to the trustees of the settlement for the purposes of the Settled Land Act, 1882.

(3) Sections fifty-nine, sixty, and sixty-two of the Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics), shall apply to the exercise of the power under this section in the same manner as they apply to the exercise of the powers of a tenant for life under that Act.

(4) Where the fee simple of any land or any interest in land in respect of which increment value duty or reversion duty is charged is vested in a mortgagee who is liable to pay any sum on account of either of those duties, he shall be entitled to add to his security the sum for which he is so liable, including any costs or expenses properly incurred by him in respect of the payment of the duty.

(5) In Scotland, where any person having a limited

Sect. 39. interest in the land or interest in land in respect of which any duty under this Part of this Act is charged, is the person who is liable to pay any sums on account of the duty, he shall be entitled to charge such land or such interest in land by means of a bond and disposition or bond and assignation in security in his own favour which he is hereby authorised to grant.

Land—Interest in Land, defined in s. 41, *infra*, p. 301.

Increment Value Duty.—See s. 1, *supra*, p. 59. The tenant for life, etc., or the trustee, may be liable to pay the increment value duty due on the occasion described in s. 1 (*a*), if he is the transferor or lessor, s. 4 (1), *supra*, p. 88. Where the tenant for life, etc., or the trustee, is the person accountable for the estate duty under s. 8 (4) of the Finance Act, 1894, he will also be liable to pay the increment value duty due on the occasion described in s. 1 (*b*) of the present Act, see s. 5, *supra*, p. 98. The tenant for life, etc., or the trustee, may also be liable to pay the increment value duty leviable in respect of minerals comprised in a mining lease or being worked, if he is the “proprietor” or the “immediate lessor,” see ss. 22 and 24, *supra*, pp. 179, 199.

Reversion Duty.—See s. 13, *supra*, p. 122. The tenant for life, etc., or the trustee, will have to pay reversion duty where he is “the lessor to whom any benefit accrues from the determination of a lease” within the meaning of s. 13, *supra*, p. 123, and subject to the provisions of ss. 14 and 15, *supra*, pp. 127, 135.

Undeveloped Land Duty (s. 16, *supra*, p. 138)—**Mineral Rights Duty** (s. 20, *supra*, p. 167).—These duties are not provided for in the present section, and cannot therefore be charged on the settled land by the tenant for life, so far as powers given by this Act are concerned.

Expenditure in Connection with the Valuation.—This does not appear to refer exclusively to the valuation to be made under s. 26, *supra*, p. 229; but generally to valuation necessary for the purpose of increment value duty or reversion duty.

Charges created under this Section.—There is nothing in the section to make charges created under it rank before charges already existing; but it does not appear quite clear whether s. 20 of the Settled Land Act, 1882, applies to charges so created. The benefit of the charge may be transferred in like manner as a mortgage, sub-s. (1). The charge apparently gives a right of sale to the chargee. With the present section may be compared or contrasted the much more elaborate provisions in s. 9 of the Finance Act, 1894, for the charging of estate duty on property.

Settled Land—Tenant for Life—Trustees of the Settlement.—The following provisions of the Settled Land Act, 1882, are relevant to these terms:—

2.—(1) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for the purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3) Land, and any estate or interest therein, which is the subject of a settlement, is for the purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5) The person who is, for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is encumbered or charged in any manner or to any extent.

(8) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(10) (i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income:—

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

63. (1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any

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number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

- (i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).

The Settled Land Act, 1890, s. 16 is as follows:—

Trustees for
the purposes
of the Act.

Where there are for the time being no trustees of the settlement within the meaning and for the purposes of the Act of 1882, then the following persons shall, for the purposes of the Settled Land Acts, 1882 to 1890, be trustees of the settlement; namely,

- (i.) The persons (if any) who are for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold or with power of consent to or approval of the exercise of such a power of sale, or, if there be no such persons, then
- (ii.) The persons (if any) who are for the time being under the settlement trustees, with future power of sale, or under a future trust for sale of the land to be sold, (or with power of consent to or approval of the exercise of such a future power

of sale, and whether the power or trust takes effect in all events or not.

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Notice to Trustees of the Settlement.—The provisions of s. 45 of the Settled Land Act, 1882, appear to apply to the notice to be given under sub-s. (2) of the present section. These provisions are as follows:—

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SETTLEMENT.

45. (1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor, at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

Infants and Lunatics.—Section 59 of the Settled Land Act, 1882, is set out *supra*, p. 295; ss. 60 and 62 are as follows:—

60. Where a tenant for life, or a person having the powers of a Tenant for tenant for life under this Act, is an infant, or an infant would if life, infant, he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

62. Where a tenant for life, or a person having the powers of a Tenant for tenant for life under this Act, is a lunatic, so found by inquisition, life, lunatic, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

Mortgagee.—A mortgagee may in certain circumstances be an "owner," "transferor," or "lessor," within the meaning given to these terms by s. 41, *infra*, p. 301. The mortgagee may therefore become liable to pay sums on account of increment value duty on the occasion on which that duty is collected under s. 1 (*a*). *supra*

Sect. 39. p. 59, if the mortgagee is the transferor or lessor, see s. 4 (1),
 — *supra*, p. 88; on the occasion specified in s. 1 (b), *supra*, p. 59, if
 MORTGAGEE. the mortgagee is the person accountable for the estate duty under
 s. 8 (4) of the Finance Act, 1894, see s. 5 of the present Act, *supra*,
 p. 98; or on the occasion specified in s. 1 (c), *supra*, p. 59, if the
 mortgagee is a body corporate or unincorporate, see s. 6, *supra*,
 p. 101. If the mortgagee is a lessor, he may be liable to pay any
 sum on account of the reversion duty under s. 13 (1), and s. 15 (1),
supra, pp. 122, 135. In all such cases he may add such sums to his
 security, including any costs or expenses within the meaning of
 s. 39 (f).

Application
 of Part I. to
 copyholds.

40. The following provisions shall have effect with respect to the application of this Part of this Act to copyholds, including customary freeholds:—

(1) In the case of copyholds of inheritance, and copyholds held for a life or lives or for years where the tenant has a right of renewal, and customary freeholds—

(a) The total and site values of the land shall be ascertained as if the land were freehold land, subject to a deduction of such an amount as is proved to the Commissioners to be equal to the amount which it would cost to enfranchise the land;

(b) References to the fee simple of land shall be treated as references to the whole copyhold or customary interest or estate;

(c) In the definition of “owner,” a reference to the person entitled to the rents and profits of the land as tenant by copy of court roll or customary tenure shall be substituted for the reference to the person entitled to the rents and profits of the land in virtue of an estate of freehold:

(2) In the case of copyhold land held for a life or lives, or for years where the tenant has not a right of renewal, this Part of this Act shall have effect as if the land were freehold land and the copyhold interest were a leasehold interest.

Copyholds and Customary Freeholds.—"Copyholds have been commonly distinguished into two classes, namely copyholds proper and customary freeholds, being respectively pure copyholds and privileged copyholds. But the distinction between the two is very slight in itself, and is of still slighter practical importance, consisting principally in this, namely, that copyholds proper are held not only according to the custom of the manor, but also at the will of the lord, whereas customary freeholds are held according to the custom of the manor, but are not . . . held also at the lord's will" (Scriven on Copyholds, 7th ed., p. 14).

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An estate held by copy of court-roll according to the custom of the manor, is a copyhold for all purposes, whether or not it is expressed to be held at the will of the lord of the manor (Sweet's Black. 21st ed., ii. 95, based on *Doe d. Edmunds v. Llewellyn* (1835), 2 Cr. M. & R. 503).

The following extracts show the distinctions between copyholds of inheritance, copyholds held for a life or lives or for years where the tenant has a right of renewal and copyholds so held where the tenant has not a right of renewal. "In some manors, where the custom hath been to permit the heir to succeed the ancestor in his tenure, the estates are stiled copyholds of inheritance; in others, where the lords have been more vigilant to maintain their rights, they remain copyholds for life only" (Sweet's Black. ii. 97).

"In some manors . . . the copyhold tenant is admitted to hold for his own life only, or for the lives of himself and another or others, or for a term of years only. In such cases, he may, by virtue of an immemorial custom, have the right either to nominate his successor, or to renew the lives or the term on payment of a certain fine; but otherwise he will have no right of renewal" (Williams on Real Property, 20th ed., p. 449).

"In manors where the copyhold may by the custom be granted for a life or lives, if the grantee is by the custom entitled to have the grant renewed on the failing or falling in of the lives, his estate is a tenant-right estate. . . . The phrase tenant-right denotes that the copyholder has a right of renewal" (Scriven on Copyholds, 7th ed., p. 15).

Land of copyhold tenure or customary freehold is not real estate passing to the personal representative under s. 1 of the Land Transfer Act, 1897 (set out, *supra*, p. 100), in any case in which an admission or any Act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant. As to the descent of copyholds generally, see Scriven on Copyholds, 7th ed., pp. 167-169.

Duties Leviable on Interests referred to in sub-s. (1).—The copyholds referred to in sub-s. (1) and customary freeholds, being "interests in land," are the subjects of increment value duty under s. 1 in the same way as other interests in land (see notes to that section, *supra*, pp. 69, 68). On the determination of a lease granted by the holder of such an interest, reversion duty is leviable under s. 13 (1), *supra*, p. 122, as in the case of other leases, subject to the exemptions conferred by s. 14, *supra*, p. 127; it is not clear how in such a case the value of the benefit will be

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DUTIES
LEVIALE ON
INTERESTS
REFERRED TO
IN SUB-S. (1).

Total Value—Site Value.—As to the meanings of these terms and the purposes for which they may have to be ascertained, see notes to ss. 2 (2), 13, 16, 25, pp. 76, 122, 137, 199. Machinery for ascertaining total value is provided by ss. 13 and 15, 26 and 27, *supra*, and for ascertaining the site value on the occasion on which increment value duty is collected, under ss. 2 and 3; the site value of land (on other occasions) is ascertained under ss. 26, 27, and 28, *supra*, pp. 229–252. The provisions of s. 27 appear to apply to the adoption of the original total and the original site values in respect of the lands here in question. The effect of s. 40 (1) (a) appears to be that the total and site values of the land with which the present section is concerned are to be ascertained in the same way as those of land in general under the provisions above referred to, and that the deduction referred to in sub-s. (1) (a) is to be made from the total and site value as so ascertained. An appeal against the refusal of the Commissioners to make such a deduction, and to make the deduction claimed, is given by s. 33, *supra*, p. 266.

As to the amount which it would cost to enfranchise the land, see the Copyhold Act, 1894, especially ss. 5–9 and 25–40.

As to deductions from the site value in cases where copyholds or customary freeholds have been enfranchised, see s. 25 (4) (d), *supra*, p. 201.

Fee Simple.—See definition in s. 41, *infra*, p. 303, and references collected in the note thereon.

Owner.—See definition in s. 41, *infra*, p. 303, and note thereon. The persons included in the present definition of "owner" will also be included in the expression "owner," as used in s. 27, *supra*, p. 212. As to the powers under ss. 26, 27, 28 of the "owner," *vide supra*, pp. 238, 243.

Undeveloped land duty is levied from the owner under s. 19, *supra*, p. 165.

Copyhold Land—Where the Tenant has not a Right of Renewal.—The effect of sub-s. (2) appears to be that the total and site values of the land in question are to be ascertained upon the same principles, and by the same machinery, as the total and site values of land in general. See note headed "Total value: site value," *supra*. But in the case of copyhold lands referred to in sub-s. (2), the copyhold interest is to be treated as if it were a leasehold interest, and therefore, where the lessor liable to reversion duty is the holder of such a copyhold interest, the value of the benefit (upon which the duty is payable) will be reduced in the proportion directed by the concluding words of s. 13 (2), *supra*, p. 122.

It does not appear that the renewal of the copyhold interest in such land can be said to be a grant of a lease of the land so as to make such a renewal an occasion on which increment value duty is due under s. 1 (a), *supra*, p. 59. Increment value duty may,

however, be payable in respect of such a copyhold interest on the occasion of a transfer on sale of the interest, and on the occasions specified in s. 1 (b) and (c), *supra*, p. 59. In such cases the provisions of s. 3 (5), *supra*, p. 84, appear to apply. See also s. 5, *supra*, p. 98.

Further, it does not appear that such a copyhold interest can be said to determine so as to make reversion duty payable on its determination under s. 13, *supra*, p. 122, except in cases where the right of renewal has accrued and is not exercised. A lease granted by the holder of a copyhold interest may, however, determine within the meaning of s. 13; as to the value of the benefit in such cases, *vide supra*. The provisions of s. 14 (2), *supra*, p. 128, which prevent reversion duty from being charged where the interest of the lessor expectant on the determination of a lease is a leasehold interest which does not exceed twenty-one years may possibly apply in certain cases where there is a copyhold interest such as is here in question, that interest being treated as if it were a leasehold interest. The question whether it does or does not exceed that number of years would then be determined according to the principles provided in the definition of the "term of a lease" in s. 41, *infra*, p. 302.

No undeveloped land duty appears to be leviable from the holder of such an interest, except, possibly, in the case next dealt with.

It would appear that the holder of such a copyhold interest is the "owner" of the land, as defined in s. 41, *infra*, p. 303, if, where the term of his interest can be computed as above, it has more than fifty years unexpired.

Minerals.—In cases where a copyholder or customary tenant has the right to take the minerals, it would appear that the provisions of ss. 20 and 21, *supra*, pp. 167, 177, as to mineral rights duty, of s. 22, *supra*, p. 180, as to increment value duty, of s. 23, *supra*, p. 188, as to valuation, must be read subject to the provisions of s. 40.

41. In this Part of this Act, unless the context otherwise requires—

The expression "land" does not include any incorporeal hereditament issuing or granted out of the land;

The expression "rentcharge" means tithe or tithe rentcharge, or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seek, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land;

The expression "rent" has the same meaning as

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in the Conveyancing and Law of Property Act, 1881, and does not include a rentcharge;

The expression "lease" includes an under lease and an agreement for a lease or underlease, but does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption;

The term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed, and in the case of a lease for life or lives, shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or, in the case of a lease granted for lives, of the youngest of the persons for whose lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined;

The expression "interest" in relation to land includes any undivided share in a fee simple in possession and includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy or an incumbrance as defined by this Act or any fixed charge as defined by this Act or any purely incorporeal hereditament or any leasehold interest under a lease for a term of years not exceeding fourteen years or any tenancy which is or is deemed to be subject to statutory conditions under the Land Law (Ireland) Acts;

The expression "incumbrance" includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act;

The expression “fixed charge” means any rent-charge as defined by this Act, and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land; Sect. 41.
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The expression “fee simple” means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession;

The expression “owner” means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that where land is let on lease for a term of which more than fifty years are unexpired, the lessee under the lease or if there are two or more such leases the lessee under the last created underlease shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid;

The expressions “lessor” and “lessee” include an underlessor and underlessee; and the expression “lessor” includes the person for the time being entitled to the reversion, whether freehold or leasehold, expectant on the determination of the lease; and the expression “lessee” includes executors, administrators, and assigns of the lessee;

The expressions “transferor” and “lessor” do not include any persons who join in the execution of the instrument by which the transfer or lease is effected, or agreed to be effected, for the purpose only of conveying any estate vested in them as trustees or incumbrancers, or of acknowledging

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the receipt of the consideration money, or of giving consent, and sections fifty-nine, sixty, and sixty-two of the Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics) shall apply to the exercise of the powers of an owner under this Part of this Act in the same manner as they apply to the exercise of the powers of a tenant for life under that Act;

The expression “agriculture” includes the use of land as meadow or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments; and the expression “agricultural land” shall be construed accordingly.

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Provisions Relating to Minerals.—As to these, an additional definition clause appears in s. 24, *supra*, p. 193.

Land.—Unless the contrary intention appears, “land” includes “messuages, tenements, and hereditaments, houses and buildings of any tenure,” by virtue of the Interpretation Act, 1889, s. 3. But this must be read, as to “tenements and hereditaments,” subject to the words excluding “any incorporeal hereditament issuing or granted out of the land,” and subject to the definition of “interest” in relation to land, *infra*, p. 308. “Land” here clearly includes “houses and buildings”; cf. s. 25 (2), and the other matters mentioned in that sub-s. As to easements, tolls, and sporting rights, see note on “Interest in relation to land,” *infra*, p. 308.

“*Any Incorporeal Hereditament.*”—“An incorporeal hereditament is a right issuing out of a thing corporate (whether real or personal) or concerning, or annexed to, or exercisable within, the same. It is not the thing corporate itself, which may consist in lands . . . or the like, but something collateral thereto, as a rent issuing out of those lands . . .” (Blackstone’s Comm. Sweet’s edn., 1844, II. 20, based on Co. Litt., 19, 20, and cited with approval in *In re Christmas* (1886), 55 L. J. Ch. 878, at p. 880). Blackstone goes on to say (p. 21) that “incorporeal hereditaments are principally of ten sorts: advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities, and rents.” Other instances given in Co. Litt. 47a, are “multure of a mill, fayres, markets, liberties.” All these are clearly excluded from “land” by the present definition; by “rents” in Blackstone being meant those rents which are here defined as rentcharges. “Easements are incorporeal” (Gale on Easements, 8th edn., p. 8; see definition of easement, *loc. cit.*, *supra*, p. 221). Upon incorporeal hereditaments generally, see also Goodeve on Real Property, Chapter XVI. As to easements and tolls, *vide infra*, p. 309.

Some authors also apply the term incorporeal hereditaments so as to include reversions and remainders, and executory interests, and distinguish incorporeal hereditaments other than reversions and remainders, and executory interests, as “purely incorporeal

Sect. 41. hereditaments," being "ever of an incorporeal nature, and never assuming a corporeal shape" (Williams, 20th edn. 410; Challis, 2nd edn., 47, 48). The inclusion of "reversions, remainders, and executory interests" is not universally approved; cf. Sweet, Law Dict., S.V. "hereditament"; but it is made clear by the express insertion of words for that purpose in the definition of "interest in land" in the present section, *infra*, p. 309, that a reversion expectant on the determination of a lease is an interest in land within the meaning of the present Act, but that other interests in expectancy are not such interests. And that being so, it is of little importance to discuss whether reversions, remainders, and executory interests are included in "land" or not; for no question appears to arise about reversions, etc., in the other sections of the Act, which is not answered by the presence of the words "interest in land" or "the fee simple" in the context, see e.g. s. 1 (a), *supra*, p. 59; s. 25 (1), *supra*, p. 199.

In s. 2 (2), *supra*, p. 76, and in s. 25, *supra*, p. 199, which lay down principles for ascertaining the value of "land," the meaning of the term is of course of great importance, and it is submitted, *infra*, p. 221, that "easements" and "tolls" (although not included in "land") may in certain circumstances have to be taken into account in ascertaining the value of land.

Minerals.—Unless where the context shows otherwise, the word "land" as used in Part I. appears to include a reference to minerals; cf. s. 23 (2), *supra*, p. 188, by which, for the purposes of valuation, all minerals shall be treated as a separate parcel of land.

Rentcharge.—The definition of rentcharge is made exhaustive for the purposes of the Act by the use of the word "means." It is unnecessary, therefore, to discuss the general meaning of the term. Everything here defined as a rentcharge is an incorporeal hereditament. Any rentcharge as here defined is a "fixed charge" within the definition of the latter.

Tithe.—Tithes constituted the provision, or a portion of the provision, for the ministers of the Established Church, being a fund for their maintenance generally issuing out of land, and amounting to a tenth part of the yearly produce of the soil; but many rights of tithe are now vested in lay hands (Goodeve, 5th edn., 348-350).

Tithe Rentcharge.—See the Tithe Commutation Act, 1836 (6 & 7 Will. 4, c. 71), and the various amending Acts. There are many local Acts imposing periodical payments in lieu of, or in the nature of, tithe in particular parishes.

Fee-farm Rent.—"A rentcharge is where the owner of the rent hath no future interest, or reversion expectant in the land, as where a man by deed maketh over to others his whole estate in fee-simple, with a certain rent payable thereout, and adds to the deed a covenant or clause of distress. . . . In this case the land is liable to the distress . . . by virtue of the clause in the deed. . . . A fee-farm rent is a rentcharge issuing out of an estate in fee: of at least one-fourth of the value of the lands, at the time of its reservation (Blackstone, Sweet's edn., 1844, II., 41-43; see also *Foley's Charity Trustees v. Dudley Corporation*, [1910] 1 K. B. 317).

Rent Seck "or barren rent is in effect nothing more than a rent

reserved by deed, but without any clause of distress" (Black. II. 42). **Sect. 41.**
 A right of distress in respect of rents seek, chief rents, and rents of
 assize has however been given by 4 Geo. 2, c. 28, s. 5. —

RENTCHARGE.

Chief Rent—Rent of Assize.—"Rents of assize are the certain established rents of the freeholders and antient copyholders of a manor, which cannot be departed from or varied. Those of the freeholders are frequently called chief rents" (*ibid.*, 42).

Other Perpetual Rent or Annuity.—Not all the rents named specifically in this definition are necessarily perpetual; but any rent or annuity granted out of land, and not so named, must be perpetual, in order to come within the definition of rentcharge. Cf. *Thomas v. Sylvester* (1873), L. R. 8 Q. B. 368.

Rent, by the Conveyancing Act, 1881, s. 2 (ix.), "includes yearly or other rent, toll, duty, royalty or other reservation, by the acre, the ton, or otherwise." A rentcharge as above defined is not in the present Act included in rent. A reference to "rent," as here defined, occurs in s. 31, *supra*, p. 256. The present definition of rent is somewhat enlarged for the purpose of the provisions as to minerals; see s. 24, *supra*, p. 193.

The word "rent" in the Act of 1881 is used "to include rent so called—that is, rent which does not issue out of the thing demised and in respect of which there can be no distress"; *Brown v. Peto*, [1900] 2 Q. B., p. 664, *per* VAUGHAN WILLIAMS, L.J. It seems doubtful, however, whether the word "rent" would include a yearly sum agreed to be paid for goodwill, fixtures, and fittings, such as was held not to be the subject of distress in *Cox v. Harper*, [1910] W. N. 34; 26 T. L. R., 264, *supra*, p. 262.

Lease.—The phrase, "term of years," is used in this definition in a somewhat different sense than that in which "term" is used in the definition of the "term of a lease," or in which the phrase "term of years" is used in the definition of "interest" in relation to land; in both those places it means a period of years. In the definition of "lease," it appears to mean the interest granted for a period of years to the lessee by the lease. When a term of years created for the purpose of securing money becomes vested in some person free from the equity of redemption (*e.g.* when the term has been assigned to a purchaser in consequence of non-payment of the money secured by the term) difficult questions may arise as to the operation of the Act. It would appear that such an assignment may be the grant of a lease of the land within the meaning of s. 1 (a), *supra*, p. 59, and may so be an occasion on which increment value duty is due. In such a case it is difficult to see how, and upon what value, the duty is to be collected. And upon the determination of the term, reversion duty may become payable under s. 13 (1), *supra*, p. 122; in such a case there may be considerable difficulty in estimating the total value of the land at the time of the original grant of the lease upon the principles laid down in s. 13 (2). "Lessor" and "lessee" are also defined by the present section.

The definition of "lease" says nothing about reversionary leases; but, as the definition does not purport to be exhaustive,

Sect. 41. there appears to be nothing to prevent such a lease being included where the context permits. See, on this point, notes to the definition of "owner," *infra*, p. 313, and to s. 14, *supra*, p. 132. "Mining lease"; see definition in s. 24, *supra*, p. 194.

LEASE.

The Term of a Lease.—Where there is a covenant to renew the lease, the period for which the lease is originally granted, and the period for which it may be renewed under the covenant, must be added together; and the result is the term of the lease within the meaning of the present Act. The phrase, "original term," used in s. 14 (2) and (3), apparently means the term of the lease, calculated according to the present definition, and does not appear to set up any distinction between the term before renewal, and the term of the lease as renewed, where the renewal takes place under a covenant in the lease.

In a lease for a life or lives, the "mean expectation of life" will have to be calculated upon actuarial tables, and must apparently be reckoned as from the date when the lease is granted; the actual facts which may have arisen before the time when the computation is made, and the mean expectation of life at that time, do not appear to be relevant.

The term of a lease may have to be calculated for the purposes of s. 1 (*a*), *supra*, p. 59, and for those of s. 14, *supra*, p. 127, as well as for the definitions of "interest in relation to land" and "owner" in the present section. As to the method of calculation, see also the note on "term of years," in s. 1, *supra*, p. 69.

As to the inclusion or exclusion of the term of a reversionary lease, see note on the definition of "owner," *infra*, p. 313.

The term of a copyhold interest, such as is described in sub-s. (2) of s. 40, may have to be computed according to the principle here laid down, *vide supra*, p. 300.

The words "and a lease renewed . . . deemed to be determined" at the end of the definition, appear to have reference to the reversion duty, which is charged on the determination of any lease of land under s. 13 (1), *supra*, p. 122.

Interest in Relation to Land.—This expression includes any undivided share in a fee simple in possession, as well as a reversion expectant on the determination of a lease. It excludes (*a*) an interest in expectancy, other than a reversion expectant on the determination of a lease; (*b*) an incumbrance as defined in this section; (*c*) any fixed charge as defined in this section; (*d*) any purely incorporeal hereditament; (*e*) any leasehold interest under a lease, as defined in this section, for a term of years not exceeding fourteen years (cf. s. 1 (*a*), *supra*, p. 59); and (*f*) the Irish tenancies specified. The words "interest in land" occur *passim* in ss. 1–12 relating to increment value duty, where their meaning, which is no doubt governed by the definition now considered, and is of great practical importance. See also ss. 35 and 37, *supra*, pp. 277 and 280. "A person interested in the land" is given certain rights in connection with valuation by s. 27 (5), *supra*, p. 241. Besides the cases cited in the following notes, those cited in the

note on "Transfer on Sale," *supra*, p. 62, may be consulted with advantage.

Purely Incorporeal Hereditament.—It has been submitted, *supra*, p. 305, that this phrase covers all "incorporeal hereditaments" other than reversions, remainders, and executory interests, some of which are provided for in the definition of "interest in relation to land." The nature of incorporeal hereditaments has been briefly discussed, *supra*, p. 305. Some of these may require for their enjoyment the exclusive possession of land; see the following notes, and the notes on "separate occupation," *supra*, p. 234.

Easements.—Of all the purely incorporeal hereditaments thus excluded from the definition of "interests in relation to land," probably the most important are easements. But an easement may be so extensive in its nature that the enjoyment of it may require the entire and exclusive possession (*Doc dem. The Queen v. Archbishop of York* (1849), 14 Q. B. 81. Accordingly it has been suggested in the note on the word "easements" in s. 25 (3), *supra*, p. 221, that the principle of *Metropolitan Rail. Co. v. Fowler* [1893], A. C. 416, applies to the interpretation of the word in that subsection, and not that of *Chelsea Waterworks Co. v. Bowley* (1851), 17 Q. B. 358; in other words, that there may be many rights which, though apparently mere easements, are in fact something more, and form a part of the "land," or a part of the value of the land. See also the note in connection with easements under "Separate Occupation," *supra*, p. 234. If the view there suggested is correct, it may be necessary, in cases where land is used in any manner comparable to the user in *Metropolitan Rail. Co. v. Fowler*, *supra*, to inquire whether the person so using the land possesses a mere easement or "purely incorporeal hereditament," or whether he in fact possesses an interest in the land. It is submitted, to put the matter in another way, that in the case of what appears to be an easement, the distinction between a "purely incorporeal hereditament" and an "interest in land" within the meaning of the present Act must often depend on the facts of the user, rather than upon the terms of the grant. As to the bearing of the above remarks upon the valuation of "land," *vide supra*, p. 211.

Tolls.—Whether tolls are "incorporeal hereditaments" is a matter which is not necessary to be considered for the present purpose. (Certain harbour tolls have been held not to be hereditaments within the Mortmain Acts (*In re Christmas, supra*); but, on the other hand, Co. Litt., 47a, includes fairs and markets among incorporeal hereditaments.) For, whether they be hereditaments or not, it is clear that tolls *per se* are incorporeal; that is, they have *per se* no substance or locality, and are not real property; see the cases relating to the non-rateability of ferry tolls, *R. v. Nicholson* (1810), 12 East. 330; *Williams v. Jones, ibid.*, 346; *R. v. North and South Shields Ferry Co.* (1852), 1 E. & B. 140. On the other hand, where tolls are profits arising from the use of particular land, as in the cases of canals, bridges, railways or water-pipes and mains, they may add to the value of that land (*R. v. Macdonald* (1810), 12 East. 324; *per* BAYLEY, J., in *R. v. Nicholson*, 12 East. at p. 346; *per* CAMPBELL, C.J., in *North and South Shields Case*, 1 E. & B. at pp. 145-6. And "when tolls are attached to and

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appurtenant to manors or lands, they are rateable as land" (*per* CAMERLIN, C.J., *ubi supra*). The cases cited are all cases upon poor rates; but it is submitted that these principles apply to the present Act, and that a toll which is not attached to particular land, and which does not actually arise from the use of particular land is not an "interest in land" within the present Act, but that tolls appurtenant to the land, or tolls which are profits arising from the use of the land, may constitute an interest in land, and may, at any rate, contribute a portion of the value of the land. See Ryde on Rating, 2nd edn., Ch. XVI.—XVIII.

A ferry is a franchise (*Newton v. Cubitt* (1862), 31 L. J. C. P. 246; *Cowes U.D.C. v. Southampton Steam Packet Co.*, [1905] 2 K. B. 287), and is therefore an incorporeal hereditament (Sweet's Black, 11. 21). Hence, ferry tolls have been held (as above shown) not to be rateable, though in the *North and South Shields case, supra*, it was held that the value of the landing-places was enhanced by their being available for the purpose of earning the tolls.

Among the classes of tolls to which the principles above stated have been applied in rating cases, and, it is submitted, should be applied here also, are bridge-tolls (*e.g. R. v. Marquis of Salisbury* (1838), 8 Ad. & E. 716; *Percy v. Hall, supra*, p. 236); market-tolls (*e.g. R. v. Bell* (1816), 5 M. & S. 221; *R. v. Caswell* (1872), L. R. 7 Q. B. 328; *Horner v. Stepney Assessment Committee* (1908), Konstam's Rat. App. (1904-1908), 743); canal tolls (*e.g. R. v. Macdonald* (1810), 12 East. 324, *supra*, p. 309); harbour tolls (*e.g. New Shoreham Harbour Commissioners v. Launcey* (1870), L. R. 5 Q. B. 489; *Swansea Harbour Trustees v. Swansea Union* (1907), Konstam's Rat. App. (1904-1908), 259; and railway tolls (*e.g. R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, *supra*, p. 212). Of none of these classes of tolls (except perhaps railway and canal tolls) can it be said in general words that they come under the one principle or the other; but railway tolls and canal tolls are generally profits arising from the use of particular land. The latest succinct statement of the question was given by Lord LOREBURN, L.C., in the *Swansea case* in the House of Lords, *ubi supra*, at p. 322, where he said, "When it is asked if these tolls or dues can be 'included' [*i.e.* in arriving at the value of the assessable hereditaments], that means, are they to be taken into account as income which the hypothetical tenant will enjoy? That depends upon another question—are they tolls in gross, or are they tolls extracted for the use of the assessable hereditaments?" Adapting these words to the present matter, it is submitted that "tolls in gross" are not an interest in land within the meaning of the present Act, but that tolls extracted for the use of land form part of "land" or of the value of land, so that they must be taken into account in the valuation of land. *Vide* under "land," *supra*, p. 305. See also notes to s. 25, *supra*, p. 211.

Sporting Rights.—A right of sporting unconnected with the ownership of the land is an incorporeal hereditament (*Hilton Overseers v. Bowes Overseers* (1866), L. R. 1 Q. B. 359; *Lowe v. Adams*, [1901] 2 Ch. 598). In consequence of the decisions in *Hilton v. Bowes* and other cases, special provision was made in

the Rating Act, 1874, 37 & 38 Vict. c. 54, s. 6, for the rating of rights of sporting (*i.e.* of fowling or of shooting or of taking or killing game or rabbits, or of fishing) when severed from the occupation of the land. It is not quite clear whether sporting rights, which are connected with the ownership of the land, but which are let separately from the land, are incorporeal hereditaments or not; but it was the intention of the present Act that they should be so treated, and that the grant of a lease of sporting rights to some person other than the tenant of the land should not be an occasion on which increment value duty is due under s. 1 (*a*), *supra*, p. 59 (Commons Debates, Official Report, 1909, vol. 10, cols. 372-374). It is submitted, however, that sporting rights even if severed from the ownership or occupation of the land, may yet be an element which adds to the value of the land, see note to s. 25, *supra*, p. 211; and s. 7, *supra*, p. 104, gives considerable support to this view. As to several fisheries, see *Foster v. Warblington U.D.C.*, [1906] 1 K. B. 648; *Fitzhardinge (Lord) v. Purcell*, [1908] 2 Ch. 139.

Licenses to Trade.—A mere license to trade does not create an interest in land, so as to entitle the licensee to compensation under s. 68 of the Lands Clauses Act, 1845, even where the license confers the exclusive right to carry on that particular trade on the premises, as where a person is given the exclusive right to carry on refreshment-rooms in a theatre, and to advertise in certain parts of it (*Frank Warr, Ltd., v. London County Council*), [1904] 1 K. B. 713, where the nature of such licenses was discussed). It is submitted, therefore, that a mere license to trade is not an "interest in relation to land" within the meaning of the present Act. As to the effect of the existence of such a license upon the value of land, see the note on "value due to trade or business" under s. 25, *supra*, p. 212.

Cost-book Mine.—A contract for the sale of shares in a "cost-book" mine is not a contract for the sale of land or an interest in land under s. 4 of the Statute of Frauds (*Watson v. Spratley* (1854), 24 L. J. Ex. 53, *disc.* Parke, B.). Such a contract may therefore be outside the purview of the increment value duty, leviable under s. 1 (*a*), *supra*, p. 59; although the increment value duty leviable annually under s. 22 (1) and (3), *supra*, p. 179, might be leviable in respect of the minerals being worked.

Share in a Company or Firm.—"The shares or other interest of any member in a company shall be personal estate, . . . and shall not be of the nature of real estate," Companies (Consolidation) Act, 1908, s. 22 (1); "company" is defined by s. 285. The company as a whole may, however, of course hold an interest in land. Each of the partners in a firm which holds land may, however, hold an interest in land so as to be entitled to a vote in respect of the freehold (*Baxter v. Brown* (1845), 7 M. and G. 198). See also note on "Dissolution of Partnership," s. 1, *supra*, p. 64.

Flats, Tenements and Dwellings.—The right to occupy any of these may be an interest in the land, cf. s. 11, *supra*, p. 119, which makes express provision for these in respect of increment value duty.

Lease for a Term of Years not Exceeding Fourteen Years.—

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Sect. 41. "Lease" and "term" are each defined in this section, *supra*, p. 302. The expression "term of years not exceeding fourteen years" occurs also in s. 1 (a), see note on "term of years," *supra*, p. 69.

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TO LAND. *Copyholds and Customary Freeholds*.—See s. 40, *supra*, p. 298.

Land Law (Ireland) Acts.—This is the collective title given by the Short Titles Act, 1896, to the following statutes: 33 & 34 Viet. c. 46 (except Parts II. and III.); 44 & 45 Viet. c. 49 (except Part V.); 50 & 51 Viet. c. 33 (except Part II.); 51 & 52 Viet. c. 13; 51 & 52 Viet. c. 37; 52 & 53 Viet. c. 59; 54 & 55 Viet. c. 57; 55 & 56 Viet. c. 45. To these must now be added the Land Law (Ireland) Act, 1896 (59 & 60 Viet. c. 47); Part III. of the Irish Land Act, 1903 (3 Edw. 7, c. 37), see s. 100 (3); and Part V. of the Irish Land Act, 1909 (9 Edw. 7, c. 42), see s. 68.

Incumbrance.—The word "incumbrance" does not include a fixed charge as defined by this Act, and therefore, if the definition of "fixed charge" is read, it follows that "incumbrance" may include any burden or charge imposed (in pursuance of the exercise of any powers or the performance of any duties under any Act of Parliament) by a person interested in the land or in consideration of any advance to any person interested in the land, because such a burden or charge is not a "fixed charge."

An "incumbrance" is not an interest in relation to land, *supra*, p. 302. The word appears in s. 25 (1), *supra*, p. 199, and is of importance in connection with the ascertaining of the total and site value of land.

Except for the words "but does not include a fixed charge as defined by this Act," the definition of incumbrance here is practically the same as that in the Conveyancing Act, 1881, s. 2 (vii.), with which it may be usefully compared.

Fixed Charge.—Any rentcharge as defined *supra*, p. 301, and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, is a fixed charge without qualification; but a burden or charge imposed in pursuance of the exercise of any powers or the performance of any duties under any Act of Parliament, is only a fixed charge when imposed otherwise than by a person interested in the land or than in consideration of any advance to any person interested in the land. A person "interested in the land" in the definition of "fixed charge" appears to mean a person who had, at the time when the burden or charge was imposed or the advance made, an "interest in relation to land" as defined in the present section.

Burdens or charges imposed by any Act of Parliament would appear to include expenses recoverable under the Public Health Act, 1875, s. 257, and the Private Street Works Act, 1892, s. 13, as well as the charges imposed under the Housing, Town Planning, etc., Act, 1909, which are referred to in the note to s. 36, *supra*, p. 279, but succession duty, estate duty, and land tax (though each of these may be a charge on the land) are expressly excluded by the present definition. "Burdens or charges imposed in pursuance of the exercise of any powers or the performance of any duties under any Act of Parliament"; these would probably be included

in the words "imposed by" any Act of Parliament (*R. v. Walker* (1875), L. R. 10 Q. B. 355; *Elve v. Boyton*, [1891] 1 Ch. 501; *Wakefield Light Railways v. Wakefield Corporation*, [1907] 2 K. B. 256; [1908], A. C. 293); but at any rate the words quoted make it clear that a burden, etc., imposed (say) by an order, or by a body of regulations, or by a charter made under statutory powers is within the purview of the sub-section. Many kinds of burdens and charges may, however, be created by private individuals in pursuance of powers or duties under Acts of Parliament.

The expression "fixed charge" occurs in s. 25 (3) and (4), *supra*, p. 200, and in the definitions of "interest in relation to land" and of "incumbrance" in the present section.

Fee Simple.—"Lease" is defined in the present section, *supra*, p. 302. The phrase "fee simple" occurs in the Act, *passim*, often in connection with valuation or assessment or apportionment of duty; see *e.g.* s. 2 (2), (a) (b) (c) (d), *supra*, pp. 76, 78, s. 2 (3), *supra*, p. 77, s. 3 (2), *supra*, p. 83, s. 4 (1), *supra*, p. 88, s. 6, *supra*, p. 101, ss. 9 and 10, *supra*, p. 115, s. 13 (2), *supra*, p. 122, s. 25, *supra*, p. 199, s. 29, *supra*, p. 252, s. 37, *supra*, p. 280, s. 39, *supra*, p. 293. As to copyholds, etc., see s. 40, *supra*, p. 298. The phrase the "fee simple of the minerals" occurs in s. 23 (1), *supra*, p. 188.

Owner.—A person entitled to the rents and profits of the land in virtue of any estate of freehold is the owner as here defined, except in the case of the leases and underleases specified in the definition, and except in the case of copyholds of inheritance, and copyholds held for a life or lives or for years where the tenant has a right of renewal and customary freeholds, which are provided for by s. 40 (1) (c), *infra*, p. 298. "Lease" is defined *supra*, p. 302. "A term of which more than fifty years are unexpired"; the "term of a lease" is defined *supra*, p. 302, and is to be calculated (it is submitted) according to the principles stated in the note or "term of years" under s. 1, *supra*, p. 69. "Years" here appear to mean years of 365 days (or 366 days) counting from the anniversary of the commencement of the term of years for which the lease or underlease is granted; and either excluding or including that anniversary according to the intention of the parties when they entered into the lease, as suggested in the note referred to. The number of years unexpired must, it is submitted, be calculated as from the date with reference to which it has to be ascertained, cf. *London County Council v. Watney, Ltd.*, [1909] 1 K. B. 637, decided upon somewhat similar words in Sched. II. of the Licensing Act, 1904 (4 Edw. 7, c. 23). Whether the lessor or the lessee is the owner may, therefore, often depend upon the actual date with respect to which the question has to be answered; see example (d), *infra*. The question whether the unexpired term for the purpose of this definition includes the period of a reversionary lease under which the lessee under the current lease has an *interesse termini*, is one of some difficulty. *Lewis v. Baker*, [1905] 1 Ch. 46, and *Llangattock (Lord) v. Watney, Ltd.*, [1910] 1 K. B. 236; [1910] W. N. 103 (decided upon Schedule II. of the Licensing Act, 1904), are authorities tending against the inclusion of the period of such a reversionary lease, while *R. v. St. Marylebone* (1887), 20 Q. B. D.

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Sect. 41. 415, decided upon a definition of "owner" in the Artizans' and Labourers' Dwellings Act, 1868 (31 & 32 Vict. c. 130), s. 3, somewhat analogous to the present definition, is an authority tending to favour its inclusion. Cf. note on s. 14, *supra*, p. 132.

OWNER.

The word "owner" appears in s. 19, *supra*, p. 165, which provides that undeveloped land duty is to be borne by the "owner" of the land for the time being. See note on incidence of that duty, *supra*, p. 166. In s. 26 (1), *supra*, p. 229, the "owner" as here defined is given power to require any part of any land which is under separate occupation to be separately valued. The word "owner" as used in s. 27 includes, by virtue of sub-s. (7), *supra*, p. 242, other persons besides those included by the present definition. The definition is also enlarged for the special purposes of s. 8, *supra*, p. 197, and s. 18, *supra*, p. 154.

- Examples.*—(a) A, the freeholder, lets land on lease for a period of 21 years. A is the owner within the definition.
- (b) A lets land on lease to B for a period of 99 years from 25th December, 1865. Undeveloped land duty is assessed for the year 1910–1911. As the lease expires on 25th December, 1964, more than fifty years of the term are unexpired; B is the "owner" for the time being, and has to bear the undeveloped land duty.
- (c) B grants in 1866 to C an under-lease of the land, which expires on 15th December, 1964. C grants in 1870 to D an under-lease, which expires on 5th December, 1964. D, being the lessee under the last created under-lease, the term of which has more than fifty years unexpired, is the "owner" for the time being, and has to bear the undeveloped land duty assessed for the year 1910–1911.
- (d) X grants to Y in 1880 a lease of land for eighty years, which expires on 25th March, 1960. Up to, and possibly on, 24th March, 1910, Y is the "owner" for the time being; on 25th March, 1910, X is "owner" for the time being.

Lessor—Lessee—Transferor.—Lessors and transferors are the persons who under s. 4 (1), *supra*, p. 88, are to pay the increment value duty collected on the occasion specified in s. 1 (a), *supra*, p. 59. Reversion duty is recoverable from the lessor under ss. 13 (1) and 15 (1), *supra*, pp. 122, 135. The meaning of the words "lessor" and "lessee" is also of importance in connection with the interpretation of s. 14, *supra*, p. 135.

The term "transferor" appears also in s. 38 (3) as to statutory companies, *supra*, p. 287. Note that the meaning of the word "lessor" is to be interpreted by reading together the paragraph beginning "The expressions 'lessor' and 'lessee'" with the paragraph beginning "The expressions 'transferor' and 'lessor.'" The word "incumbrancers" in the latter paragraph must be read in connection with the definition of "incumbrance," *supra*.

Infants and Lunatics.—Sections 59, 60, and 62 of the Settled Land Act, 1882, are set out, *supra*, pp. 295, 297.

Agriculture—Agricultural Land.—The definition of agriculture is not exhaustive; and it is clear (*inter alia*) that arable

land, which is not mentioned, must be agricultural land or land used for agricultural purposes within the meaning of the Act. The present definitions differ so much from that of agricultural land in the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 9, that decisions upon the latter scarcely appear to afford useful guidance, except perhaps as to the meaning of particular words. The latter definition is, however, set out as follows, as it may be useful for purposes of contrast or comparison:—

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The expression "agricultural land" means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse.

Under the present Act, "Increment value duty shall not be charged in respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only," subject to a proviso as to value for sporting purposes and for certain other purposes (s. 7, *supra*, p. 105), and another exemption from that duty in respect of certain agricultural land is created by s. 8 (2), *supra*, p. 107.

"No reversion duty shall be charged on the determination of the lease of any land which is at the time of the determination agricultural land" (s. 14 (2), *supra*, p. 128).

The expression "any business, trade or industry other than agriculture" appears in the definition of undeveloped land on which undeveloped land duty is charged, s. 16 (2), *supra*, p. 139 (see note on market gardens and nursery grounds, *infra*, p. 316); and, in the case of certain agricultural land, that duty is only charged on the amount by which the site value of the land exceeds the value of the land for agricultural purposes (s. 17 (2), *supra*, p. 155). There are also special provisions exempting from the duty "agricultural land" held under certain tenancies (s. 17 (5), *supra*, p. 157), or occupied and cultivated by the owner within certain limits of value (s. 18, *supra*, p. 164).

Section 25 (4), *supra*, p. 201, also contains references to agriculture and the value of the land therefor.

In the valuation to be made under s. 26 (1), *supra*, p. 229, "in the case of agricultural land, the value of the land for agricultural purposes" is to be shown separately "where that value is different from the site value."

These provisions show that "agricultural land" is not confined to land which is *only* used for the purposes of agriculture as defined in the present section. It follows, apparently, that a user, say, for the exercise of sporting rights, or for a racecourse, or a trainer's gallop, or a golf links, or a park, does not necessarily prevent land from being agricultural land if there is a substantial user for purposes of agriculture. But land which is also used for some such other purpose as has just been named may have a higher value than its value for agricultural purposes only; as to which see the proviso to s. 7, *supra*, p. 103. Such of the cases decided upon

Sect. 41. s. 211 (1) (b) of the Public Health Act, 1875 (38 & 39 Vict. c. 55), as turn upon the presence of the word "only" in that provision, like
AGRICULTURE *Atton U.D.C. v. Spicer*, [1904] 1 K. B. 678, do not appear to apply
 — **AGRICUL-** to the definition of agricultural land. See also the note on "other
TURAL LAND. than agriculture" under s. 16, *supra*, p. 152.

Davies v. Scisdon Union, *supra*, p. 266, affords an instance of a sewage farm which, in addition to its value for agricultural purposes, had a value to the Sewerage Board as providing and containing means for the disposal of its sewage.

But although agricultural land may, it appears, be used in part for purposes other than agriculture, and although the value due to that partial user may be value for other than agricultural purposes, in most cases where agricultural land has any value additional to its value for agricultural purposes, that additional value will be due to the potential value of the land for building purposes (as in the case of many market gardens on the outskirts of towns); and this appears to be the primary reason for inserting in the Act the provisions referred to, which distinguish value for agricultural purposes from other value.

Meadow or Pasture Land.—There are no words here, as in the Agricultural Rates Act, expressly excepting parks from the definition of agricultural land. And it is submitted therefore that land which is used substantially (and not merely colourably) for grazing sheep, cattle or horses is included in meadow or pasture land, and is therefore agricultural land, even though it also contributes to the amenities of a house (cf. *Huish Overseers v. Surveyor of Taxes*, *supra*, p. 161). Of course, however, it may have a value other than its value for agricultural purposes only; but see the proviso to s. 7, *supra*, p. 104.

Woodland.—See note to s. 17 (3) (b), *supra*, p. 161.

Market Gardens or Nursery Grounds.—It has been held in *Smith v. Richmond* [1898], 1 Q. B. 683; [1899] A. C. 448, *supra*, p. 145, that glasshouses, standing upon a market garden and used for its purposes, are not agricultural land under the Agricultural Rates Act, 1896, but are "buildings," which by s. 1 of that Act are to be rated to the full rate, and by s. 5 are (with other hereditaments) to be shown in the valuation list separately from agricultural land. On the other hand, the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b), creates a three-fourths exemption to the general district rate in favour of land "used as market gardens or nursery grounds," in common with certain other kinds of property which receive only a small benefit from the expenditure of that rate; and upon this section it had previously been decided that glasshouses which practically covered the surface of a market garden and were used for its purposes, formed part of the market garden, and that the occupier was entitled to the three-fourths exemption in respect of the whole of the land so covered and used (*Purser v. Worthing Local Board* (1887), 18 Q. B. D. 818). It is submitted that the latter decision applies to the present definition, that land used as a market garden (including any glasshouses or greenhouses upon it) is agricultural land, and that the value due to its use as a market garden is value for agricultural purposes, within

the meaning of the present Act, for these expressions are used in the sections referred to *supra*, p. 315, to differentiate the actual user and value of land for agricultural purposes from its actual user and value for other than agricultural purposes, and from its potential uses and value for such other purposes; and there is no distinction set up in Part I. between buildings and agricultural land. In other words, it is submitted that, if the land is actually used for agricultural purposes, the method of user is immaterial, and that whether the user is by buildings or otherwise, the land may be agricultural land, and have a value only for agricultural purposes. Glasshouses and greenhouses are expressly included by s. 16 (2), *supra*, p. 139, among the buildings by the erection of which land is taken out of the description of undeveloped land, although in general those buildings must be "for the purposes of any business, trade or industry other than agriculture"; and the wording of that sub-section suggests that, but for their express inclusion, glasshouses and greenhouses would not have been within the general description quoted. The view above expressed is not, it is submitted, affected by the distinction set up in s. 25 (4), *supra*, p. 201, between "the value of the land for agriculture" and its value "as building land, or for the purpose of any business, trade, or industry other than agriculture."

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Farm Buildings.—It is submitted that the principles indicated with reference to glasshouses upon market gardens apply also to farm buildings, and that land covered with barns, cowhouses, stables, and so on may be agricultural land, and have no value except for agricultural purposes. See Commons Debates, Official Report, 1909, Vol. 11, col. 1398. These remarks would probably not apply in most cases to land covered by farmhouses or other buildings used for the residence of people employed in agriculture.

But farm buildings, other than dwelling-houses, are not buildings by the erection of which land is taken out of the description of undeveloped land in s. 16 (2), *supra*, p. 139.

Allotments.—The precise meaning of this term is difficult to define; but as any land which might conceivably be called an allotment is probably agricultural land, apart from its being also an "allotment," it is perhaps scarcely necessary to find a precise meaning. In fact, the inclusion of the word here appears chiefly to have the effect of providing that land shall not be excluded from the definition of agricultural land merely because it may be described as an allotment. The definitions in other statutes do not appear to afford much guidance. Thus, under the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (50 & 51 Vict. c. 26), s. 4, "Allotment" means any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden or as a farm, or partly as a garden and partly as a farm"; and the Allotments Rating Exemption Act, 1891 (54 & 55 Vict. c. 33), has the same definition, except that the words "and let as an allotment" appear in place of the words, "held by a tenant under a landlord." An allotment provided under Part II. of the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), may, however, apparently be as much as five acres in extent (s. 27 (3)); moreover, by s. 61, "allotment" includes a field garden. For the

Sect. 41. purposes of the Housing, Town Planning, etc., Act, 1909, "the expression 'allotment' means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act" (s. 73(4)).
 — AGRICULTURE It is submitted that allotments provided under the Act of 1908,
 — AGRICUL- or provided under earlier general Acts, or under local Acts, would
 TURAL LAND. all be allotments within the present Act. Some of these may be within the purview of the exemptions created by ss. 35 and 36, *supra*, pp. 277, 279. Allotments provided by private landlords would also appear to be allotments within the present Act.

A piece of land used by a seedsman or a market-gardener for the purposes of his business (though less than two acres in extent) is not an allotment within the definition quoted from the Act of 1887, *supra* (*Cooper v. Pearse*, [1896] 1 Q. B. 562).

Application
of Part I. to
Scotland.

42. In the application of this Part of this Act to Scotland, unless the context otherwise requires :—

- (1) The expression "land" does not include teinds, titles or offices of honour, or any servitude, superiority, casualty, feu-duty, or ground annual, or any incorporeal heritable right ;

The expression "rent" includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton or otherwise ; and for the purpose of section thirty-one of this Act includes feu-duty and ground annual ;

The expression "rent-charge" includes feu-duty and ground annual ;

The expression "interest" in relation to land includes the landlord's right of reversion to the subjects let on the determination of the lease, but does not include teinds, servitude, superiorities, any interest in expectancy, whether vested or not, heritable securities, bonds of provision, jointures, annuities, or other capital or annual sums, or other debts secured upon heritage, or any sporting right, or any lease thereof ;

The expression "owner" means the fiar of the land, except that where land is let on lease for a term of which more than fifty years are unexpired, the tenant under the lease shall

be deemed to be the owner, and includes an institute or heir of entail in possession ;

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—

The expression “freeholder” includes “fiar,” “life-renter of land settled within the meaning of the Finance Act, 1894,” and “institute or heir of entail in possession,” and the expression “freehold” shall be construed accordingly ;

The expression “incumbrance” includes any heritable security, or other debt or payment secured upon heritage, and the expression “incumbrancer” shall be construed accordingly ;

“Servitudes” shall be substituted for “easements” and shall be deemed to include public rights ;

“Local Government Board for Scotland” shall be substituted for “Local Government Board” ;

The expression “borough or urban district” means a royal, parliamentary or police burgh ;

A reference to an appeal to quarter sessions shall not apply ;

“Court of Session” shall be substituted for “High Court” : Provided that, for the purposes of appeals from the decisions of referees, the judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts shall be substituted for the High Court, subject to such regulations as may be prescribed by Act of Sederunt, and the appeal from such judges shall be to the House of Lords, and in subsections (2), (3), and (4) of section ten of the Finance Act, 1894, as applied with reference to any such appeal the said judges shall be substituted for the High Court, and sheriff court shall be substituted for county court, and there shall be an appeal from the sheriff court to the said judges, whose decision in such case shall be final.

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(2) Any order of a referee as to expenses shall be enforceable as a recorded decree arbitral.

(3) Sub-section (2) of section two of this Act shall be construed as if after paragraph (d) thereof the following paragraph were added (that is to say) :—

(c) where the occasion is the grant of any feu of the land or the creation of any ground annual thereon, the value of the fee simple of the land calculated on the basis of the value of the consideration for such grant or creation, by way of feu duty, ground annual, or otherwise.

Where increment value duty falls to be collected on a feu contract or feu charter or a contract of ground annual, it shall be paid by the person by whom or on whose behalf the feu is granted or the ground annual is created, and for the purposes of this Part of this Act that person shall be deemed to be the transferor or the transferor on sale and the contract or charter to be the instrument, and the expressions “transfer” and “transfer on sale” shall be construed accordingly.

The expressions “lessor” and “lessee” include a sub-lessor and sub-lessee and the heirs, executors, administrators, and assigns of a lessor and lessee respectively.

(4) Where arrangements are made under section four of this Act for dispensing with the presentation of any instrument or particulars thereof, it shall be the duty of the keeper of the general register of sasines, and of the respective keepers of burgh or other local registers, to furnish to the Commissioners particulars of instruments presented for registration or registered in their respective registers as may be prescribed by

regulations of the Commissioners, and in such case the provisions of sub-section (3) of section four shall not apply. Sect. 42.

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PART VII.

PROVISIONS AS TO PAYMENTS TO LOCAL AUTHORITIES AND TO ROAD IMPROVEMENT ACCOUNT.

* * * * *

91.—(1) There shall be charged on and paid out of the Consolidated Fund or the growing produce thereof a sum equal to one-half of the net proceeds of the duties on land values under Part I. of this Act (including mineral rights duties). Payment of half the proceeds of the duties on land values for benefit of local authorities.

(2) The sums so charged shall be carried to a separate account, to be established under regulations made by the Treasury for the purpose, and, subject to such regulations as may be made by the Treasury in respect of accounts, audit, and accumulation of moneys standing to the account, be appropriated for the benefit of local authorities in the United Kingdom in such manner as Parliament may hereafter determine.

PART VIII.

GENERAL.

* * * * *

93.—(1) All rules and regulations made by the Treasury or by the Commissioners of Inland Revenue or by the Commissioners of Customs and Excise under this Act shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such rule or regulation is laid before it, praying that the rule or regulation may be annulled, His Majesty in Council

Laying of rules and regulations before Parliament.

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may, if it seems fit, annul the rule or regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

(2) If any rule or regulation is so annulled any duty previously paid which, but for the rule or regulation, would not have been payable, shall be repaid by the Commissioners, without prejudice, however, to the right of the Commissioners to reassess the duty in accordance with any rule or regulation which may be substituted for the annulled rule or regulation.

Penalty for making false statement or representation.

94. If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

Provision as to assessments, payments, etc., made on account of duty before passing of Act.

95.—(1) All assessments or charges made or other things done before the passing of this Act with a view to the collection of any duty imposed by this Act shall have the same force and effect as if this Act had been in operation at the time when the assessment or charge was made or other thing done.

(2) Any payments made before the passing of this Act on account of any duty imposed thereby, and any payments of drawback made on account of any such duty which would have been proper payments on account of duty or proper payments of drawback if this Act had been in force at the time, shall be deemed to be payments properly made under this Act, and if treated as such before the passing of this Act shall be deemed to have been properly so treated.

(3) The liability of any person to pay any sum on account of any duty imposed by this Act shall not be affected by the fact that he has, before the passing of this Act, paid either directly or by way of deduction any

such sum if the sum so paid has been subsequently refunded to him, and any such sum may without prejudice to any other remedy be recovered as a debt due to His Majesty. Sect. 95.

(4) Where any deduction which would have been a legal deduction if this Act had been in force has been made on account of any duty imposed by this Act, and the sum deducted has subsequently been made good by the person making the deduction, that person shall not be prevented from again making the deduction.

In such a case, and also in a case where a person could have made a legal deduction if this Act had been in force on account of any duty imposed by this Act, but has not made it, the person who has made or could have made the deduction, as the case may be, shall be entitled, if there is no future payment from which the deduction may be made, to recover the sum as if it were a debt due from the person to whom the original deduction has been made good or as against whom the deduction could have been originally made.

(5) Any reference in this section to a duty imposed by this Act includes a reference to a duty increased by this Act.

96.

* * * * *

(2) Any reference to "the Commissioners" in Part II., Part VI., or Part VII. of this Act shall be construed as a reference to the Commissioners of Customs and Excise, and any reference to "the Commissioners" in any other Part of this Act shall be construed as a reference to the Commissioners of Inland Revenue.

Repeal, construction, and short title.

(3) Part III. of this Act shall be construed together with the Finance Act, 1894.

57 & 58 Vict.
c. 30.

* * * * *

(7) This Act may be cited as the Finance (1909-10) Act, 1910.

APPENDIX.

CUSTOMS AND INLAND REVENUE ACT, 1881.

(44 & 45 VICT. c. 12.)

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue.

[3rd June 1881.]

PART III.

STAMPS.

* * * * *

38.—(1) Stamp duties at the like rates as are by this Act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or moveable property to be included therein according to the value thereof. Grant of duties on accounts of certain property.

(2) The personal or moveable property to be included in an account shall be property of the following descriptions, viz. :—

- (a) Any property taken as a donatio mortis causâ made by any person dying on or after the first day of June one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been bonâ fide made three months before the death of the deceased.
- (b) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

Appendix. (c) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3) Where an account delivered duly stamped comprises property passing under a voluntary settlement, and, upon the production of the settlement, it shall appear that the stamp duty of five shillings per centum has been paid thereon according to the amount or value of the property so passing, or any part thereof, the amount of such stamp duty shall be returned to the person delivering the account.

See amendments to this section made by s. 11 of the Act of 1889, *infra*, p. 331.

CUSTOMS AND INLAND REVENUE ACT, 1885.

(48 & 49 VICT. c. 51.)

An Act to grant certain Duties of Customs and Inland Revenue, and to amend the laws relating to Customs and Inland Revenue. [6th August 1885.]

PART II.

STAMPS.

Duty on Property of Bodies Corporate and Unincorporate.

* * * * *

Interpreta-
tion of terms. 12. In the construction and for the purposes of this part of this Act—

The term “body unincorporate” includes every unincorporated company, fellowship, society, association, and trustee, or number of trustees, to or in whom respectively any real or personal property shall belong in such manner, or be vested upon such permanent trusts, that the same shall not be liable to legacy duty or succession duty.

The term “accountable officer” means every chamberlain treasurer, bursar, receiver, secretary, or other officer,

trustee, or member of a body corporate or unincorporate by whom the annual income or profits of property in respect whereof duty is chargeable under this Act shall be received, or in whose possession, or under whose control, the same shall be. Appendix.
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13. The duty hereby imposed shall be considered as a stamp duty, and shall be under the care and management of the Commissioners of Inland Revenue, herein-after called the Commissioners, who by themselves and their officers shall have the same powers and authorities for the collection, recovery and management thereof as are vested in them for the collection recovery and management of the succession duty, and shall have all other powers and authorities necessary for carrying this Act into execution. Duty to be under the care of the Commissioners of Inland Revenue.

A stamp duty: see note, p. 87, *supra*.

Succession duty: the enactments regulating this duty are referred to in the note at p. 73, *supra*; see also ss. 56—59, 61, 63 and 64 of the Crown Suits Act, 1865 (28 & 29 Vict. c. 104).

14. The duty hereby imposed shall be a first charge on all the property in respect whereof the same shall be payable while such property shall remain in the possession or under the control of the body corporate or unincorporate chargeable with such duty, or any party or parties acquiring the same, with notice of any such duty being in arrear, and every such body corporate or unincorporate, and every accountable officer, shall, to the full extent thereof, be answerable to Her Majesty for the payment of duty charged thereon. Duty to be a first charge on property; what parties accountable for the duty.

This section, as applied by s. 6 (3) of the Act of 1910, appears to have the effect of making the duty leviable under s. 1 (c), a first charge ranking *pari passu* with the duty imposed by s. 11 of the Act of 1885.

15.—(1) Every body corporate or unincorporate chargeable with the duty hereby imposed shall, on or before the first day of December in the year one thousand eight hundred and eighty-five, and on or before the first day of October in every subsequent year, deliver, or cause to be delivered to the Commissioners or their officers, a full and true account of all property in respect whereof any such duty shall be payable, and of the gross annual value, income, or profits thereof accrued to the same body in the year ended on the preceding fifth day of April, and of all deductions claimed in respect thereof, whether by relation to any of the Return of property to be made to the Commissioners.

Appendix. before-mentioned exemptions from such duty or as necessary outgoings.

(2) The account shall be made in such form and shall contain all such particulars as the Commissioners shall, by any general or special notice, require, or as shall be necessary or proper for enabling them fully and correctly to ascertain the duty due, and every accountable officer hereinbefore made answerable for payment of duty in respect of any property chargeable under this Act, shall be answerable also for the delivery to the Commissioners of such full and true account as aforesaid of and relating to such property.

The words in sub-s. (1) from "and of the gross annual value" inclusive to the end of the sub-section appear irrelevant to the purposes of the increment value duty, but nevertheless the particulars specified must be included in the account rendered for those purposes, unless the Commissioners make it clear by notice under sub-s. (2) that these are not required.

The exemptions referred to are those created by s. 11 (1) to (7) of the Act of 1885, and are immaterial for the present purpose.

Power for persons answerable to retain moneys for payment of duty.

16. Every accountable officer shall be at liberty to retain or raise out of any moneys of any body corporate or unincorporate which shall be held by him or shall come to his hands, the full amount of all moneys which he shall pay or have paid on account of the duty hereby imposed, and all reasonable expenses incident to such payments.

Power for Commissioners to assess duty according to accounts rendered or to obtain other accounts.

17.—(1) It shall be lawful for the Commissioners to assess the duty upon the footing of any account rendered to them, or if dissatisfied with such account to cause an account to be taken by any person or persons appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account *subject to appeal to a court in the same manner as in any case of succession duty as hereinafter provided.*

(2) If the duty so assessed shall exceed the duty assessable according to the account rendered to the Commissioners, and with which they shall have been dissatisfied, *and if there shall be no appeal against such assessment*, then it shall be in the discretion of the Commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account or any funds liable to such duty as an addition thereto and part thereof, and to recover the same accordingly ; *but if there shall be an appeal against such assessment*

then the payment of such expenses shall be in the discretion of the court. Appendix.

(3) The duty shall be payable immediately after the assessment, *and notwithstanding any appeal therefrom, provided that in the event of the amount of the assessment being reduced by the order of the court, the difference in amount shall be repaid with such interest (if any) as the court may allow.*

The parts of s. 17 which are here printed in italics, are provisions relating to appeals, and these are excepted from application by s. 6 (3) of the Act of 1910, *supra*, p. 101

The increment value duty may be paid by instalments at the option of the body liable, s. 6 (4), *supra*, p. 102.

Section 17 is the only section of the Act of 1885 that is applied to the reversion duty, Act of 1910, s. 15 (4), *supra*, p. 135.

There is no express provision for assessment by the Commissioners where no account is rendered at all. In such a case it appears that all they can do is to proceed for penalties; see s. 18, *infra*, and s. 15 (3) of the Act of 1910, *supra*, p. 135; but in order so to proceed they must first assess the duty.

18.—(1) Every body corporate or unincorporate, and every accountable officer hereby required to deliver any such account as aforesaid and wilfully neglecting so to do on or before the first day of December in the present year, or on or before the first day of October in any subsequent year shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable in respect of the property required to be comprised in such account, and a like penalty for every month after the first month during which such neglect shall continue. Penalty for not making returns and for non-payment of duty.

(2) Every body corporate or unincorporate, and every accountable officer hereby required to pay any duty, and wilfully neglecting so to do for a space of twenty-one days after the same shall have become payable, shall be liable to pay to Her Majesty a penalty equal to ten pounds per centum upon the amount of such unpaid duty, and a like penalty for every month after the expiration of the said period of twenty-one days during which such neglect shall continue.

See the note on "Penalty" under s. 15 (3) of the Act of 1910, *supra*, p. 135.

19.—(1) The Commissioners shall, for the purposes of this part of this Act, have the same powers in relation to pro- Application of enactments

Appendix. — proceedings to enforce the delivery of accounts, and in relation to the verification of accounts, and the production and inspection of books and documents as they have in relation to succession duty under the law now in force.

as to succession duty to this part of this Act.

Section 55 of the Crown Suits Act, 1865 (28 & 29 Vict. c. 104), enacts as follows:—If any person accountable for or chargeable with duty under the Succession Duty Act, or the Legacy Duty Acts, required by the Commissioners of Inland Revenue to deliver an account under those Acts or any of them, makes default in doing so, the Commissioners may sue out of the Court of Exchequer a writ of summons commanding him to deliver an account and to pay the duty and the costs of the proceedings or to show cause to the contrary; and on cause being shown, such order shall be made as seems just.

As to proceedings by such writs of summons, see also ss. 58, 59, 61, 63, 64. Since the Judicature Acts, a writ under s. 55 would no doubt be sued out in the King's Bench Division. Section 55 is not in force in Scotland or Ireland, where ss. 47 and 48 of the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), still apply.

By s. 49 of the Succession Duty Act, 1853, Every person who under the provisions of this Act may deliver any account or estimate of the property comprised in any succession shall, if required by the Commissioners, produce before them such books and documents in the custody or control of such person, so far as the same relate to such account or estimate, as may be capable of affording any necessary information for the purpose of ascertaining such property and the duty payable thereon; and the Commissioners may, without payment of any fee, inspect and take copies of any public book; but all such information shall be deemed to be confidential, and the Commissioners shall not disclose the same, or the contents of any document or book, to any person, otherwise than for the purposes of this Act.

* * * * *

Court to provide for payment of duty.

20. In the case of any proceeding in any court for the administration of any property chargeable with duty under this Act, such court shall provide out of any such property in its possession or control for the payment of the duty to the Commissioners.

CUSTOMS AND INLAND REVENUE ACT, 1889.

(52 & 53 VICT. c. 7.)

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue.

[31st May, 1889.]

PART II.

STAMPS.

* * * * *

Amendment of Laws as to Succession Duties and Duties on Accounts.

* * * * *

11.—(1) Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended, as follows :—

Amendment
of 44 & 45
Vict. c. 12,
s. 38.

The description of property marked (a) shall be read as if the word “twelve” were substituted for the word “three” therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise :

The description of property marked (b) shall be construed as if the expression “to be transferred to or vested in himself and any other person” include also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person :

The description of property marked (c) shall be construed as if the expression “voluntary settlement” included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression “such property” wherever the same occurs, included the proceeds of sale thereof :

The charge under the said section shall extend to money

Appendix.

received under a policy of assurance effected by any person dying on or after the first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(2) A return of stamp duty shall not be made under subsection three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June one thousand eight hundred and eighty-nine.

Limitation of Claims to Succession Duty or Legacy Duty in certain Cases.

Purchaser and mortgagees exempted from liability to succession duty after a specified period.

12.—(1) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that Act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for succession duty or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act, then after the expiration of six years from the last-mentioned date.

(2) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other than the purchaser or mortgagee, and

shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption. Appendix.

(3) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise ; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

13.—(1) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any succession duty, or duty hereinbefore imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office. Power to deposit copies of documents and liability to duty to cease after specified period.

(2) The officer of the Commissioners receiving the copy shall, on request of the person making the deposit and either by endorsement on the original document or otherwise, give a receipt in writing under his hand for the copy.

(3) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty.

(4) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

14. No person shall, under a testamentary document admitted to probate or under letters of administration, or under a confirmation, be liable for payment of any legacy duty or succession duty, or duty hereinbefore imposed by this part of this Act, after the expiration of six years from Liability to duty under documents admitted to probate to cease after a

Appendix. the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects specified period. a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty ; and no trustee, executor, or administrator, shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief.

FINANCE ACT, 1894.

(57 & 58 VICT. c. 30.)

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year. [31st July, 1894.]

* * * * *

PART I.

ESTATE DUTY.

Grant of Estate Duty.

Grant of estate duty.

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as herein-after expressly provided, be levied and paid, upon the principal value ascertained as herein-after provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty" at the graduated rates herein-after mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such estate duty.

This section is referred to by s. 1 (b) of the Act of 1910, *supra*, p. 59.

Principal value.—*Vide infra*, pp. 344, 360, *sqq.*

Property, settled property, property passing on the death.—Defined in s. 22, *infra*, p. 351.

Certain decisions upon this and the following section are summarised *infra*, pp. 335–341.

What property is deemed to pass.

2.—(1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say :—

- (a) Property of which the deceased was at the time of his death competent to dispose ; Appendix.
- (b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest ; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole ;
- (c) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom.

44 & 45 Vict.
c. 12.

52 & 53 Vict.
c. 7.

* * * * *

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

This section is referred to by s. 1 (a) of the Act of 1910, *supra*, p. 59.

Property, property passing on the death of the deceased, deemed competent to dispose.—See definition clause, s. 22, set out *infra*, p. 351.

Customs and Inland Revenue Acts, 1881, s. 38 ; 1889, s. 11, set out *supra*, pp. 325, 331.

As to gifts and dispositions inter vivos, see now Finance (1909-10) Act, 1910. s. 59, *post*, p. 361.

Decisions under the Finance Act, 1894—

Sections 1 and 2 of the Act of 1894 are "mutually exclusive . . . and s. 2 throws no light on s. 1" so far as the property described in each section is concerned (*Earl Cowley v. Inland Revenue*, [1899] A. C. *per* Lord MACNAGHTEN at p. 212, *infra*, p. 337). But s. 1 is the section which actually imposes the duty, both upon the property in s. 1, and for the additional classes of property described in s. 2 ; and the classes of property described in s. 1 and in s. 2 (1), (a), (b),

Appendix. (c) and (3) are in the same position as far as the Act of 1910 is concerned. It has therefore been thought advisable to summarise together, in the following note, certain decisions upon s. 1 and s. 2 (1) (a) (b) and (c) which deal with land or interests in land, or which appear to be relevant thereto:—

By a marriage settlement the wife's interest contingent under her father's will in a sum of money was assigned to the trustees upon trusts (*inter alia*) to pay the income to the wife during the joint lives of husband and wife, and to the survivor of them during his or her life, and if the wife survived her husband (in the events which happened the trust fund was to be held in trust for her absolutely. The wife's contingent interest became an interest in possession before her husband's death. Upon his death, the wife became entitled absolutely to the trust fund. It was held that the words of s. 2 (1) (b) of the Finance Act, 1894, were wide enough to cover this case; but that it was also covered by s. 5 (3), which prevented the levy of any duty under s. 1, *Att.-Gen. v. Wood*, [1897] 2 Q. B. 102; followed and approved in another case of a marriage settlement, where upon the husband's death the wife became entitled absolutely to the *corpus* producing an annuity that was paid to the wife during the husband's lifetime (*Att.-Gen. v. Glossop*, [1907] 1 K. B. 163; *infra*, p. 351).

The widow of a former proprietor of an estate had an annuity of £800 a year charged upon the estate by bond. Upon her death, the present proprietor was only relieved to the extent of £400 a year, the other £400 a year released by the death becoming then payable by him to the widow of another former proprietor. The present proprietor was held to be liable to pay duty under s. 1 upon the whole principal value of the annuity of £800 a year, that being the extent to which a benefit accrued or arose by the cesser of the first widow's interest, within the meaning of s. 2 (1) (b) (*Inland Revenue v. MacLachlan* (1899), 36 Sc. L. R. 727; [1900] W. N. 204).

A widow, having a life interest in real and personal property settled by a marriage settlement, appointed part of the property to her son subject to her life interest. Subsequently, and more than 12 months before her death, she executed a deed by which she surrendered to the trustees of the settlement her life interest in that part of the property; the property was to be held in trust for the same son and his heirs, etc.; the widow's life interest was to merge in the son's interest in remainder. Upon the death of the widow, the House of Lords held that that part of the settled property which was the subject of the appointment and the surrender was not "property passing by death" within the meaning of s. 1, nor was it "property in which the deceased or any other person had an interest ceasing on the death of the deceased"; nor had any benefit accrued or arisen by the cesser of such interest, within the meaning of s. 2 (1) (b) (*Att.-Gen. v. Beech*, [1899] A. C. 53).

Certain real property being settled in tail male, the tenant for life created annuities and charges to secure certain advances. Upon the coming of age of his son, the tenant in tail, the son and father joined

in executing a disentailing deed; they afterwards borrowed a sum of £210,000 and granted a mortgage in fee of the estates in favour of the lenders with a proviso for redemption. With part of the sum so borrowed the whole of the moneys due on account of the advances previously mentioned was paid off; and the annuities and charges first created were assigned to the holders of the mortgage in fee. The father and son subsequently executed a deed of re-settlement of the equity of redemption for the father and the son and his sons in tail male, by which deed it was provided *inter alia* that the son, the tenant in tail, should receive during the lifetime of his father, the tenant for life, a sum of £3000 a year. The father and son afterwards executed a second mortgage on the estates, for a sum of £20,000. Upon the death of the father, the Commissioners sought to levy duty under s. 1 upon a sum which represented the aggregate value of the settled estates. The House of Lords held that the son was liable to pay only upon what was left of that value, after deducting therefrom £230,000, being the amount of the loans secured by the first and second mortgages; for the only property which passed to the son within the meaning of s. 1 was the equity of redemption, the mortgage being no part of the settled property, but having operated to diminish the property before the settlement. It was held also that s. 2 does not apply to an interest in property which passes on the death of the deceased, such an interest being already dealt with in s. 1, but that even if it did, the only benefit that "accrued or arose" within the meaning of s. 2 (1) (b) was the value of the equity of redemption. On the other hand, the son claimed also to deduct from the aggregate value of the settled estates a sum representing the capitalized value of the annuity of £3000 a year, and to this deduction he was held not to be entitled (*Cowley (Earl) v. Inland Revenue*, [1899] A. C. 198).

A father devised certain freehold property to his son; the son devised all his residuary property, real and personal, to trustees upon trust for conversion for the benefit of his wife and daughter respectively. The son predeceased his father; the son's wife and daughter were living at the death of the father. Under s. 33 of the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 36), the devise in the son's will took effect as if his death had happened immediately after the death of his father. It was held that duty was payable under s. 1 of the Act of 1894 upon the property devised by the son's will, because it was "property of which the deceased (*i.e.* the son) was at the time of his death competent to dispose" within the meaning of s. 2 (1) (a). Duty under s. 1 had already been paid upon all the property which passed upon the death of the father, including the freehold property in question; and the effect of the decision was that, in the circumstances, duty had to be paid twice on the value of the same freehold property (*In re Scott*, [1901] 1 Q. B. 228).

A testator left his estate to trustees for sale and investment, to pay out of the income an annuity to his wife; the balance (if any) of the income during the lifetime of the wife, he left to his eight children named in the will; at the death of his wife, he left legacies to the total value of £9600 among the eight children, and the residue

Appendix. — to be divided in nine shares, eight of the shares going to the eight children, and the ninth to two of the testator's grandchildren. It was held that the legacies and eight-ninths of the residue passed to the children on the death of the testator, subject to the burden of the annuity; and that the only property which passed on the death of the widow was the one-ninth share of the residue, and the benefit accruing to the eight children by the cesser of the widow's annuity. The only property in question was the proceeds of the sale of real property (*In re Townsend*, [1901] 2 K. B. 331).

Certain property, settled by a marriage settlement, was limited thereby to the husband for life with remainder to the wife for life, and, subject thereto, was at the absolute disposal of the wife. The wife exercised her power of appointment in favour of certain relatives, and predeceased her husband. Duty became leviable under s. 1 upon the wife's death in respect of the whole value of the settled property, because that property was property within the meaning of s. 2 (1) (a). The operation of s. 5 (2) prevented any further duty from being leviable upon the death of the husband; and though the Commissioners, in levying duty at the death of the wife, had made an abatement in respect of the husband's life interest, it was held to have been then leviable on the full amount of the property. The Commissioners therefore returned the duty which they had levied, on the death of the husband, in respect of the value of his life interest. The property concerned in this case was personal property (*Inland Revenue v. Priestley*, [1901] A. C. 208).

Under a marriage settlement, the husband's trust fund (which consisted of certain securities) stood settled upon trust for the husband for life, and after his death for the wife for life, and after her death to such persons as the husband should by will appoint. The husband by his will appointed the trustees to hold the fund after his wife's death in trust for such persons as his wife should by will appoint. The husband died, and upon his death it was held that the husband's fund was property passing under s. 2 (1) (b) (*In re Dixon*, [1902] 1 Ch. 248).

Earl Cowley's Case (*supra*, p. 337) was distinguished in another case where a mortgage had been executed. An estate was limited by will to the widow of the testator for life, and after her death to the use of the testator's son, and after the death of the latter, to the son's sons in tail male. The son and his eldest son (upon the coming of age of the latter) joined with the consent of the widow in an indenture of disentail and resettlement, by which the estate was conveyed to trustees to hold subject to the widow's life estate to such uses as the son and his eldest son should jointly appoint, and in default of and subject to such appointment, to the use of the son for life and then to the use of his eldest son for life with remainder to the use of the latter's sons in tail male. On the following day, the widow, the son, and his eldest son joined in a mortgage of their several interests in the estate as security for a loan of £27,000 advanced to the son and his eldest son; the son and his eldest son covenanting to repay the principal together with interest at 4 per cent. On the same day as the last mentioned deed was executed, the son and his eldest son, by

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indenture, covenanted to keep the widow indemnified against the mortgage debt and interest thereon, and conveyed to trustees an annuity of £1500 a year charged on another estate to keep down the interest on the mortgage debt so that the life interest of the widow might be wholly exonerated therefrom. Upon the death of the widow, it was held that duty under s. 1 became payable on the whole value of the first mentioned estate, and that no deduction might be made from that value in respect of the mortgage debt of £27,000; for the equity of redemption was property which passed on the death of the widow, within the meaning of s. 1; and so much of the income of the estate as represented the interest on the mortgage came exactly within s. 2 (1) (b). The true transaction between the parties was that, as between themselves, the mortgage should not effectually attach to the estate until the death of the widow; and it was not, as in *Earl Cowley's Case*, a simple case of a mortgage by a tenant for life and a remainderman (*Att.-Gen. v. Montagu (Lord)*, [1902] 1 K. B. 429; [1904] A. C. 316).

A father by his will directed his trustees to accumulate the income of the residue of his estate during the lifetime of his elder daughter who was the first heir of entail to his entailed estate; upon her death, the trustees were to apply the accumulations in paying off debt secured upon the entailed estate, and any surplus was to be spent in purchase of additional lands to be entailed on the same series of heirs as the entailed estate. On the death of the elder daughter, it was held that duty was payable under s. 1 in respect of the residue and the accumulations, because, though they did not then "pass" within the meaning of s. 1, they were property which was deemed to pass within the meaning of s. 2 (1) (b) (*H.M. Advocate v. M'Taggart Stewart* (1906), 43 Sc. L. R. 465). The elder daughter executed a deed of propulsiion of the entailed estate and a deed of gift of her personal property, both in favour of her own daughter, who was the next heir; she continued to live in the mansion-house, occupying a bedroom there, and joining with the rest of the persons living there in the use of the public rooms. She died seven years after the execution of the deeds. It was held that her continuing to live in the mansion-house was not an incident of proprietorship, and that the property the subject of the deeds passed when they were executed, and was not property passing upon her death within the meaning of s. 1 or s. 2. No duty was therefore payable under s. 1 in respect of that property (*ibid*).

By a marriage settlement, certain estates in fee simple were limited to trustees to the use of the children as tenants in common, with a limitation over; if any of the children should die under age without issue, his share was to be held to the use of the survivors as tenants in common. Of the three children of the marriage, one died under age without issue; the two others came of age and took indefeasible estates in the property. It was held that no property passed, or was deemed to pass, on the death of the first-named child within the meaning of s. 1 or s. 2, so as to make duty payable under s. 1 in respect of the estates (*Att.-Gen. v. Power*, [1906] 2 I. R. 272).

The owner of real and personal property gave both to his nephew

Appendix. — by deed; the real estate (other than the mansion-house) was given to the nephew in fee simple, subject to an annual rentcharge to be paid to the uncle during his life; the mansion-house with its appurtenances and contents was to be held in trust to permit the uncle to occupy it during his life; the nephew covenanted (*inter alia*) to pay the uncle's funeral and testamentary expenses, and his debts to the exhaustion of his real and personal property. In certain events, the uncle had power to revoke the deed. Upon the uncle's death, nine years later, it was held that duty under s. 1 was payable on the whole of the property by virtue of s. 2 (1) (c), and not merely on the mansion-house and its contents (*Att.-Gen. v. Earl Grey*, [1898] 2 Q. B. 534; [1900] A. C. 124).

A mother, being tenant for life of real property of which her son was tenant in tail, joined with her son in executing a disentailing deed, by which the estate tail was barred, and the son became owner in fee; the mother died within twelve months of the execution of the deed. It was held that the life estate of the mother, which had passed to the son upon the execution of the deed, was not liable to duty under s. 1, in spite of the provisions of s. 2 (1) (c) (*Att.-Gen. v. de Preville*, [1900] 1 Q. B. 223). Section 11 of the Finance Act, 1900, *infra*, p. 359, was apparently passed in order to get rid of the effect of this decision.

A father transferred to his son on the occasion of his marriage a sum of £10,000 as a condition precedent to a settlement by the bride's father; the £10,000 would not have been paid unless the bride's father had agreed to make a settlement. The condition being fulfilled, the bride's father made a settlement of a sum of £20,000 upon trusts for the husband and wife and their issue. The husband's father died within twelve months of the transfer of the £10,000. It was held that the consideration for the transfer of the sum of £10,000 did not proceed to the transferor (the husband's father); that the transfer of the £10,000 was a gift within the meaning of the Customs and Inland Revenue Act, 1881, s. 38 (2) (a) as amended by the Act of 1889, s. 11 (1), *supra*, pp. 331, 332, and read with the Finance Act, 1894, s. 2 (1) (c). Duty under s. 1 was therefore leviable in respect of the £10,000 (*Att.-Gen. v. Holden*, [1903] 1 K. B. 832). See now s. 59 of the present Act, *infra*, p. 361.

Lands included in a marriage settlement and granted by the settlor (the husband's father) to trustees to hold from the date of the marriage to the use of the husband subject to various trusts and remainders, were held (the settlor dying within twelve months of the execution of the settlement) to be liable to duty by virtue of s. 2 (1) (c) (*Att.-Gen. v. Smyth*, [1905] 2 I. R. 553). In an antenuptial contract of marriage, the father of the bride bound himself to pay her £300 a year as pin-money, and to pay to the trustees a sum of £15,000 at the first term after his death, or to pay the whole or a part of such sum during his life; he actually prepaid to the trustees £10,000 less than six weeks before his death; duty was held by virtue of s. 2 (1) (c) to be leviable in respect of the £10,000 (*H.M. Advocate v. Heywood-Lonsdale's Trustees* (1906), 43 Sc. L. R. 529).

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In a marriage settlement made more than twelve months before the death of the settlor a mortgage debt was conveyed to trustees, upon trusts (*inter alia*) to pay a portion of the income to the settlor's daughter and the surplus to the settlor during his life. In certain eventualities, the *corpus* was limited to be held in trust for the settlor. On the death of the settlor, it was held that no duty was leviable by virtue of s. 2 (1) (c) upon any interest in the property settled which enured to the benefit of the settlor's daughter, her children, or her husband (*In re Cochrane*, [1905] 2 I. R. 626 ; [1906] 2 I. R. 200).

A payment of £5000 to a charitable institution within twelve months of the death of the payer was held to be a gift, and therefore to be liable to duty by virtue of s. 2 (1) (c), although the payer had previously covenanted that her executors should pay to the institution after her death a sum of £5000 free of duty, and the trustees of the institution had released her from the covenant in consideration of the payment (*Att.-Gen. v. Cobham (Viscount)* (1904), 20 T. L. R. 337).

3.—(1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

Exception for transactions for money consideration.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate duty.

4. For determining the rate of Estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof :

Aggregation of property to form one estate for purpose of duty.

Provided that any property so passing, in which the deceased never had an interest, or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or lineal descendant of the deceased,

Appendix. shall not be aggregated with any other property but shall be an estate by itself, and the Estate duty shall be levied at the proper graduated rate on the principal value thereof; but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate duty.

Settled
property.

5.—(1) Where property in respect of which Estate duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property,—

- (a) a further Estate duty (called settlement estate duty) on the principal value of the settled property shall be levied at the rate herein-after specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but
- (b) during the continuance of the settlement the settlement Estate duty shall not be payable more than once.

(2) If Estate duty has already been paid in respect of any settled property since the date of the settlement, the Estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

(3) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

(4) Any person paying the settlement Estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the ad valorem stamp duty (if any) charged on the settlement in respect of that property.

(5) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of

alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be in the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of Estate duty, in like manner as for the purpose of succession duty.

Appendix.

See also s. 13 of the Finance Act, 1898, *infra*, p. 358 ; and s. 55 of the Act of 1910, *infra*, p. 360.

Collection and Recovery of Duty and Value of Property.

6.—(1) Estate duty shall be a stamp duty, collected and recovered as herein-after mentioned.

Collection
and recovery
of estate duty.

(2) The executor of the deceased shall pay the Estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the Estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

(3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6) Interest (a) . . . on the Estate duty shall be paid from

Appendix. the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens (a). . . .

(7) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due . . . , (a) and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly ; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

(a) Words omitted repealed by Finance Act, 1896, s. 40. As to interest, see s. 18 of that Act, *infra*, p. 358.

Value of
property.

7.—(1) In determining the value of an estate for the purpose of Estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances ; but an allowance shall not be made—

(a) For debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(b) For any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(c) More than once for the same debt or incumbrance charged upon different portions of the estate ;

And any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom, (unless contracted to be paid in the

United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which Estate duty is paid ; and there shall be no repayment of Estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British Possession in which the person to whom such debts are due resides, is insufficient for their payment.

(3) Where the Commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased ; (a) . . .

(a) The proviso to sub-s. (5) has no longer any effect (except as respects the property passing on death of persons dying before 30th April, 1909), with which increment value duty is not concerned) ; see s. 60 (1) of the Finance (1909-10) Act, 1910 ; and except in the cases provided for by s. 61 ; vide *infra*, p. 363.

(6) Where an estate includes an interest in expectancy, Estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate duty in respect of the rest of the estate, then,—

- (a) For the purpose of determining the rate of Estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased ; and
- (b) The rate of Estate duty in respect of the interest when it falls into possession shall be calculated

Appendix.

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according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

(7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

- (a) If the interest extended to the whole income of the property, be the principal value of that property ; and
- (b) If the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8) Subject to the provisions of this Act, the value of any property for the purpose of Estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10) Property passing on any death shall not be aggregated more than once, nor shall Estate duty in respect thereof be more than once levied on the same death.

Supplemental provisions as to collection, recovery, and repayment of and exemption from Estate duty.

8.—(1) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of Estate duty, and for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

52 & 53 Vict.
c. 7.
54 & 55 Vict.
c. 66.

(2) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, (a) and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if Estate duty were therein mentioned as well as Succession duty, and as if an account were not settled within the

meaning of any of the above sections until the time for the payment of the duty on such account has arrived. Appendix.

(a) Sections 12—14 of the Customs and Inland Revenue Act, 1889, are set out *supra*, p. 332.

(3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which Estate duty is payable upon the death of the deceased, and shall be accountable for the Estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(4) Where property passes on the death of the deceased, and his executor is not accountable for the Estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the Estate duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property : Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(5) Every person accountable for Estate duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which Estate duty is leviable on the death of the deceased.

(6) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of

Appendix. — the Estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect : Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

(7) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

(8) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9) Where the Commissioners are satisfied that the Estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

(a) * * * * *

(a) Sub-s. (10) repealed, Finance Act, 1896, s. 40.

(11) If after the expiration of twenty years from a death upon which Estate duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

(12) Where it is proved to the satisfaction of the Commissioners that too much Estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at three per cent. per annum.

(13) Where any proceeding for the recovery of Estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14) All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in

such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

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(15) No charge shall be made for any certificate given by the Commissioners under this Act.

(16) The Estate duty may be collected by means of stamps or such other means as the Commissioners prescribe.

(17) The form of certificate required to be given by the proper officer of the court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of court in such manner as may appear necessary for carrying into effect this Act. 44 & 45 Vict. c. 12.

(18) Nothing in this section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable consideration without notice.

* * * * *

Discharge from and apportionment of Duty.

11.—(1) The Commissioners on being satisfied that the full Estate Duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for Estate duty the property shown by the certificate to form the estate or part thereof as the case may be. Release of persons paying Estate duty.

(2) Where a person accountable for the Estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the Estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for Estate duty, and the Commissioners shall give a certificate of such discharge.

(3) A certificate of the Commissioners under this section shall not discharge any person or property from Estate duty

Appendix. — in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for ;

(4) Provided nevertheless that a certificate purporting to be a discharge of the whole Estate duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

* * * * *

Savings and Definitions.

Savings.

11 & 15 Vict.
c. 12.

21.—(1) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

(2) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

(3) Where an interest in expectancy in any property has, before the commencement of this part of this Act, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed ; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4) The settlement Estate duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act.

(5) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate duty shall not be payable in respect of that property until the death of the survivor.

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22.—(1) In this Part of this Act, unless the context otherwise requires :—

- (a) The expressions “deceased persons” and the “deceased” mean a person dying after the commencement of this Part of this Act :
- (b) The expression “will” includes any testamentary instrument :
- (c) The expression “representation” means probate of a will or letters of administration :
- (d) The expression “executor” means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession or of intermeddles with the personal property of a deceased person :
- (e) The expression “Estate duty” means Estate duty under this Act :
- (f) The expression “property” includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale :
- (g) The expression “agricultural property” means agricultural land pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property :
- (h) The expression “settled property” means property comprised in a settlement :
- (i) The expression “settlement” means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or 45 & 46 Vict. if it related to real property would be a settlement ^{c. 38.} within the meaning of that section, and includes a settlement effected by a parol trust :

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- (j) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases :
 - (k) The expression "incumbrances" includes mortgages and terminable charges :
 - (l) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death :
 - (m) The expression "the Commissioners" means the Commissioners of Inland Revenue :
 - (n) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto :
 - (o) The expression "prescribed" means prescribed by the Commissioners.
- (2) For the purposes of this Part of this Act—
- (a) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not : and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument *inter vivos* or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life under the Settled Land Act, 1882, or as mortgagee :
 - (b) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required :
 - (c) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.
- (3) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower

or by the courtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased. Appendix.

Application to Scotland.

23. In the application of this Part of this Act to Scotland unless the context otherwise requires :—

(1) The Court of Session shall be substituted for the High Court : Application of Part of Act to Scotland.

(2) “ Sheriff court ” shall be substituted for “ county court ” :

(3) “ Confirmation ” shall be substituted for “ representation ” :

(4) The expression “ receiver of the property and of the rents and profits thereof,” means a judicial factor upon the property :

(5) The expression “ Inland Revenue affidavit,” means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory :

(6) The expression “ on delivering the Inland Revenue affidavit ” means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight of the Act of the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine :

(7) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that Act, and the Acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and sixpence : 44 & 45 Vict. c. 12.

(8) The expression “ personal property ” means moveable property :

(9) The expression “ real property ” includes heritable property :

(10) The expression “ incumbrance ” includes any heritable security, or other debt or payment secured upon heritage :

(11) The expression “ executor ” means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or

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management of any personal property of a deceased person :

- (12) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act :
- (13) The expression " trustee " includes a tutor, curator, and judicial factor :
- (14) The expression " settled property " shall not include property held under entail :
- (15) An institute or heir of entail in possession of an entailed estate shall whether *sui juris* or not be deemed for the purposes of this Act to be a person competent to dispose of such estate :
- (16) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, settlement Estate duty as well as Estate duty shall be paid in respect of such estate, but neither Estate duty nor settlement Estate duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies :
- (17) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid Estate duty in respect of such estate, and afterwards disentaile such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the Estate duty paid by him as aforesaid :
- (18) Where any person who pays Estate duty on any property, and in whom the property is not vested, is by this Act authorised to raise such duty by the sale or

mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session— Appendix.
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- (a) For an order of sale of the property or part of it, and in the event of the Court granting such order, it shall provide for the payment out of the price of the amount of the Estate duty which has been paid by such person, and the court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the court shall seem proper ; the court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the court shall grant authority to the clerk of court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested ; or
- (b) For an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the Estate duty, for the amount of the said duty, and if the person in whom the property is vested refuses, or fails to do so, the court shall grant authority to the clerk of court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of Estate duty ;

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (a) and (b) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty :

- (19) This Part of this Act shall apply to property in

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which the wife or husband of the deceased takes an estate of terce or courtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

* * * * *

FINANCE ACT, 1896.

(59 & 60 VICT. c. 28.)

An Act to grant certain duties of Customs and Inland Revenue, to alter other Duties, to amend the Law relating to Customs and Inland Revenue, and to make provision for the Financial Arrangements of the Year.
[7th August 1896].

PART IV.

DEATH DUTIES.

Estate Duty.

Exception to passing of property on enlargement of interest of settlor.

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

This section does not alter the law as it previously stood (*Att.-Gen. v. Wood*, [1897] 2 Q. B., at p. 110, *supra*, p. 336).

Reverter of property to disponent.

15.—(1) Where by a disposition of any property an interest is conferred on any person other than the disponent for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponent or of any benefit to him by contract or otherwise, and the only benefit which the disponent retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for

the purpose of the principal Act to pass by reason only of its reverter to the disposer in his lifetime. Appendix.

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest. 16 & 17 Vict. c. 51.

In a marriage settlement, the wife's fortune consisted of hereditaments which were subject to her mother's life interest, as well as of money and securities, some of which were subject to her mother's life interest. The wife's fortune and the husband's fortune were vested in trustees upon trust to pay out of the income arising from investing the same an annuity of £400 to the wife, and the residue to the husband, during the joint lives of both, and to pay the whole income to the survivor of them during his or her life; after the decease of the survivor upon trust for the children of the marriage, subject to a power of appointment among the children in the husband and wife or the survivor; on failure of such issue, the trustees were to hold the wife's fortune upon trust, if she were the survivor, for her executors, etc., but if not, for such person as she should by will appoint, and in default of appointment for various persons. There were no children of the marriage. On the death of the husband, duty under s. 1 of the Act of 1894 was held to be payable, in spite of the provisions of s. 15 (1) of the Act of 1896, because at the time when the settlement was executed, it created a contingent interest in favour of the children of the marriage if any should be born, and such an interest was an "interest created" within the meaning of s. 15 (1) (*Att.-Gen. v. Glossop*, [1906] 1 K. B. 284; [1907] 1 K. B. 163). But such duty was not payable on the *corpus* which produced the annuity of £400, *vide supra*, p. 336.

A similar decision had been previously given by the King's Bench Division in *Att.-Gen. v. Penrhyn* (1900), 16 T. L. R. 464.

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Interest upon
estate duty
and other
death duties.

18.—(1) Simple interest at the rate of three per cent. per annum without deduction for income tax shall be payable upon all estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

(2) The foregoing provision shall apply to the interest on all death duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

FINANCE ACT, 1898.

(61 & 62 VICT. C. 10.)

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year. [1st July 1898.]

PART V.

ESTATE DUTIES.

Persons not
sui juris not
to be deemed
competent to
dispose for the
purpose of
breaking
settlements.

13. Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof, "and who if on his death subsequent limitations under the settlement take effect in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property."

Settlement
estate duty
repayment.

14. Where in the case of a death occurring after the commencement of this Act settlement estate duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be unpaid.

FINANCE ACT, 1900.

Appendix.

(63 & 64 VICT. c. 7.)

An Act to grant certain Duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provision for the financial arrangements of the year. [9th April 1900.]

PART III.

DEATH DUTIES.

11.—(1) In the case of every person dying after the thirty-first day of March nineteen hundred, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purpose of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was *bonâ fide* made or effected twelve months before the death of the deceased, and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

Amendment
of 57 & 58
Vict. c. 30,
as to property
passing on
death.

(2) This section shall inter alia apply in Scotland to the conveyance or discharge of any life rent in favour of the fiar, or to the propulsiion of the fee under any simple or tailzied destination.

See now s. 59 of the Act of 1910, *infra*, p. 361.

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13.—(2) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I. of the Finance Act, 1894, for the purposes of that Act, and the Acts amending that Act, without requiring that statement to be verified on oath.

Appendix.

FINANCE ACT, 1907.

(7 EDW. 7, c. 13.)

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year. [9th August 1907.]

PART III.

DEATH DUTIES.

Power to entertain application for discharge from claims for estate duty made at any time.

14. The Commissioners may, if they think fit, entertain any application made for the purpose of sub-section (2) of section eleven of the principal Act (which relates to discharge from claims for Estate duty), at whatever time the application is made ; and, as respects any application so entertained the provisions of that sub-section shall have effect notwithstanding that the application is made before the lapse of the two years mentioned in that sub-section.

THE FINANCE (1909-10) ACT, 1910.

PART III.

DEATH DUTIES.

* * * * *

Limitation of relief from estate duty in respect of settled property.

55. For the purpose of any claim to relief from estate duty under sub-section (2) of section five or sub-section (1) of section twenty-one of the principal Act, in the case of persons dying on or after the thirtieth day of April, nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

Power to transfer land in satisfaction of estate duty, settlement

56.—(1) The Commissioners may, if they think fit, on the application of any person liable to pay Estate duty or settlement Estate duty or succession duty in respect of any real (including leasehold) property, accept in satisfaction of the

whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person. Appendix.
—
estate duty,
or succession
duty.

(2) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

57. Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy within the meaning of the principal Act in any property passing or deemed to pass on the death of a person dying after the passing of this Act, and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of Estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance : Limitation
on debts
deductible
from value of
estate.

Provided that—

(a) If part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only ; and

(b) If a person whose interest in expectancy in the property so purchased, acquired, or extinguished, becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

* * * * *

59.—(1) In the case of a person dying on or after the thirtieth day of April, nineteen hundred and nine, the period preceding the death of the deceased before which a disposi- Provision as
to gifts and
dispositions
inter vivos.

Appendix. — tion purporting to operate as an immediate gift inter vivos must have been made, or a surrender, assurance, divesting, or disposition must have been made or effected, in order that the property taken under the disposition, or affected by the surrender, assurance, divesting or disposition, may not be included as property passing on the death of the deceased, shall be three years instead of twelve months before the death, and accordingly paragraph (a) of sub-section (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act, 1889, and applied by paragraph (c) of sub-section (1) of section two of the principal Act), sub-section (3) of section two of the principal Act, and section eleven of the Finance Act, 1900, shall be read as if three years were substituted for twelve months :

44 & 45 Vict.
c. 12.
52 & 53 Vict.
c. 7.

63 & 64 Vict.
c. 7.

Provided that this section shall not apply to any gift inter vivos, surrender, assurance, divesting, or disposition made or effected before the thirtieth day of April, nineteen hundred and eight, or made or effected for public or charitable purposes.

(2) So much of paragraph (c) of sub-section (1) of section two of the principal Act and this section as makes gifts inter vivos property which is deemed to pass on the death of the deceased shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount.

(3) Where property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of the disposition, surrender, assurance, or divesting, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section.

60.—(1) In the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the proviso to sub-section (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of estate duty) shall cease to have effect.

Appendix.

—
Amendment
as to value of
property.

(2) In estimating the principal value of any property under sub-section (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

(3) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I. of this Act, and the provisions as to appeals under that Part of this Act shall apply accordingly.

61.—(1) Notwithstanding anything in the last preceding section, the proviso to sub-section (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is or is deemed to be subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

Special provisions with
respect to
certain classes
of property.

(2) Where it is claimed that a fixed duty is payable in respect of any property under sub-section (1) of section sixteen of the principal Act as being property of a gross value not exceeding three hundred pounds or five hundred pounds, as the case may be, and such property includes property which is proved to the satisfaction of the Commissioners to be subject to a charge created for the purpose of securing unpaid purchase money, or money borrowed for the purpose of paying purchase money, or to be subject

Appendix. — to or liable to be made subject to a charge for securing an advance made or to be made for the purpose of the purchase thereof, the value thereof for the purpose of determining the gross value of the property under the said section shall be taken to be its value subject to such charge or liability as aforesaid.

(3) Land subject to an annuity under the Land Purchase (Ireland) Acts shall be treated as real property for the purposes of sub-section (8) of section six of the principal Act (relating to the payment of estate duty by instalments).

(4) Where the property passing on the death of a person dying after the passing of this Act comprises the purchase money of land agreed to be sold under the Land Purchase (Ireland) Acts, but the purchase money has not been paid, the estate duty payable in respect of that purchase money may, at the option of the person liable to pay the same, be postponed until the purchase money is actually paid, and shall then become payable, but the person liable to pay the duty shall in the meantime pay annually interest on the amount of the duty payable at the rate of three per cent. per annum.

(5) Where an estate, in respect of which estate duty is payable on the death of a person dying after the passing of this Act, comprises land on which timber, trees, or wood are growing, the value of such timber, trees, or wood shall be aggregated with the other property passing on the death of the deceased for the purpose of determining the value of the estate and the rate of estate duty, but the estate duty which, but for this sub-section, would be payable on the principal value of the timber, trees, or wood shall not be payable thereon, but shall, at the rate so ascertained, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of the timber, trees, or wood, when felled, during the period which may elapse until the land on the death of some other person again becomes liable or would, but for this sub-section, have become liable to estate duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received :

Provided that if at any time the timber, trees, or wood are sold, either with or apart from the land on which they are growing, the amount of estate duty on the principal

value thereof which, but for this sub-section, would have been payable on the death of the deceased, after deducting the amount (if any) of estate duty paid in respect of the timber, trees, or wood under this sub-section since that date, shall become payable. Appendix.

This sub-section shall apply to succession duty payable in respect of woodlands in like manner as it applies to estate duty, except that nothing in this sub-section shall affect the rate of succession duty.

62. Where increment value duty is to be collected on the occasion of the death of any person in respect of the fee simple of any land or any interest in land comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of estate duty under sub-section (1) of section seven of the principal Act, for the amount of increment value duty so to be collected as if it were a debt. Deduction of amount paid for increment value duty from value of estate for purposes of estate duty.

* * * * *

64. Where an interest in expectancy within the meaning of Part I. of the principal Act in any property has, before the thirtieth day of April, nineteen hundred and nine, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee. Protection of purchasers and mortgagees of interests in expectancy.

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